JUSTICE STUDIES CENTER OF THE AMERICAS (JSCA)

Comparative Report
«Judicial Reform Processes In Latin America» Follow-Up Project

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INTRODUCTION

Over the course of the past two decades, nearly every country in Latin America has undertaken the task of reforming its criminal justice systems following fairly homogeneous standards. These reforms have generally been aimed at overcoming various problems that have traditionally been identified with the archaic systems based on the inquisitive model inherited from the Spanish colonial period. More modern institutions, which often fall into the category of the adversarial system, have been introduced.

These reform processes are currently in various stages of progress. Some countries already have years of experience operating with the new models, while others have just begun. Still others are in the preliminary stages of legislative definition. In all of these systems, experience seems to indicate that the stage of implementation of the model chosen during the design phase is absolutely critical and that, in many cases, a weak implementation process could jeopardize those decisions resultant of arduous policy debate during the planning stages.

One of the most notorious weaknesses shown in the implementation stage has been the lack of information about the real functioning of the judicial systems. While the exchange of experiences at the regional level has been very dynamic in the early design stages of the reform processes, it greatly declines during the implementation stage. This is, in part, due to the lack of available information, and thus creates difficulties in identifying problems and evaluating results. During the development of the reform processes, the different countries have spent, and continue to spend, large sums of money to create new positions for prosecutors and public defenders, to construct new buildings, and to provide administrative and computer support to the new criminal justice systems. Risk arises from the fact that a weak implementation process can frustrate many of the expectations created by the reform processes to justify current and future investments.

The present study focuses on the implementation of the reform processes through a systematic and comparative attempt to produce information on the day-to-day operations of the reformed systems. It assumes that understanding the way the new systems are operating, and disseminating that information, will provide the greatest incentive for those involved in the reforms to revitalize them; to clearly identify their problems and to design strategies to overcome them. The intention is, above all else, to revitalize the debate which began during the planning and design stages, so that it may continue to enrich the legal culture of each nation, thereby strengthening the overall quality of the criminal justice systems.

COMPARATIVE REPORT

The Justice Studies Center of the Americas (JSCA) conducted a comparative study during the year 2001, in conjunction with local institutions, to discover the results of the criminal justice reform processes in each of four Latin American countries: Costa Rica, Argentina (in the province of Cordoba), Chile, and Paraguay.

The institutions that have served as counterparts in each country are entities with vast experience in local-level judicial reform processes: The INECIP (Institute for compared Studies in Criminal and Social Sciences) in Argentina, teams from the law schools of the University of Chile and Diego Portales University in Chile, a team related to the Association of Criminal Science of Costa Rica, and the INECIP in Paraguay.

The first step of the project was to devise a set of data collection instruments that were then employed with the aid of the local teams. Once the information was compiled, each team prepared a report describing the results. The final step was to prepare the present report, to combine and compare the initial results from each of the countries, to identify some of the aspects common to all the processes, and to reveal certain factors that help explain the special strengths of some processes and the weaknesses of others.

These four cases were selected primarily because the first two, Cordoba and Costa Rica, correspond to reform processes developed within the context of systems that have been the object of significant prior reforms and that have generally been considered by the other countries as examples for their own respective processes. The cases of Chile and Paraguay, in contrast, deal with very radical changes in countries in which the criminal justice systems were tied to archaic models that had never undergone major changes or any significant modernization processes. In all cases, the selection was complemented by the willingness of the local teams to become involved in the process of collecting information.

I. AIMS AND GENERAL DESCRIPTION OF THE PROJECT

The general aim of this project is to contribute to a more informed and systematic discussion of the workings of the region's criminal justice systems. This is directly connected to the goal of helping to strengthen the criminal reform processes that have taken place in the different countries of Latin America. The implementation of those processes is often perceived to be weak, which in turn causes their results to be less effective than desired. This weakness is particularly evident in that the follow-up, critique, and correction of the implementation process is generally less intensive than the stages of designing and discussing the legislative aspects of the new system.

Based on these considerations, the JSCA has attempted, in this first stage, to contribute to the production of information about the reform implementation processes of the four countries involved in this project.

Judicial systems are complex in many ways primarily because they comprise a variety of components, ranging from normative, cultural, and institutional elements to material and human resources. However, their complexity also stems from their multiple objectives. In fact, the judicial reform processes implemented over the last two decades by the majority of the countries in the region have been proposed from many different political and social sectors with the aim of achieving or strengthening some of their many objectives, such as creating judicial systems that are open to receiving complaints and claims from anyone, particularly those in the weakest positions. These systems should be quick to resolve the questions posed and be predictable in their decisions. They should be efficient in controlling crime, respectful of the legal rights of all people,

and denounce those who infringe upon the human rights of others. They should be managed efficiently and be effective in the determination of property rights. They should control corruption, be open, and contribute to legitimizing democratic systems.

This multiplicity of aims complicates the process of evaluating the results of the reform because, at least in relative terms, it allows for unlimited justification of the success or failure of a specific process. It also concerns objectives that line up on many different levels with the judicial system. While some pertain to the area of internal operation, others relate to the indirect effects of the work of the judicial system, and the success of the latter depends upon external factors that cannot be controlled through the reform process.

We believe that any evaluation attempt requires the clear definition of the parameters by which the reform processes will be evaluated. The easiest way to do this would be to select one or more of the objectives that have justified the reforms in order to construct evaluation instruments relative to this or these parameters, and ignore the rest. This is one possible and probably productive option, as long as its scope is explicit. We feel, however, that this method runs the risk of distancing us from one of the most characteristic elements of the reform – precisely the ability to unite a very broad range of interests and expectations around concrete projects of change. It is also this multiplicity characteristic of the reforms that often makes their success possible by generating broad political, social, and institutional alliances. We therefore believe that the evaluation should also cover this spectrum. The judicial systems themselves are interwoven with this amplitude of objectives. They are systems that are characterized precisely by their attempt to articulate multiple and even conflicting interests and expectations, and therefore, they should be specifically evaluated on their ability to respond to this complexity of intentions and expectations.

The problem was, therefore, to find a way to simplify the definition of a specific set of parameters to be evaluated, while maintaining the ability to describe the success or failure of the many different objectives that justified the reform. Our proposal was to approach this goal by focusing on another common and central characteristic of the reform proposals, that is, the emphasis on changing a very specific set of practices in the normal operations of the judicial systems. A major characteristic of the criminal procedure reforms is that they call for substantial changes in the way institutions of the judicial system do their work, necessitating an overall change in the justice system's operational paradigm. This change presents the possibility of having a positive impact on the set of diverse variables that operate on various levels, and which we refer to here as the objectives, or the expectations, of the reform.

The first task then is to attempt to measure this set of common elements that comprise the new paradigm by asking whether the reforms have been capable of truly changing the workings of the judicial system in the proposed manner, and, if so, to what degree? Also, in which areas have the changes been effective, and in which areas have they seen less success? We believe that there are good reasons for considering these very relevant questions, and that we are likely to find many difficulties and disparities in these areas.

Access to information regarding the characteristic elements of the reform, such as the changes in practice, is indispensable to accomplishing the final objectives of the reform. Without a change in judicial procedures, it is pointless to ask whether this has

contributed to a more efficient control of crime or whether the citizens perceive the system to be more legitimate, as the success of these objectives has always been presumed to be dependent upon an effective change in the way the system works. On the other hand, if we consider the cumulative experience of legal reforms in Latin America in different geographical areas and historical periods, we can see that their failures are due less to a lack of correspondence between the design and their goals, a relationship that is rarely achieved in practice, than to the inability of the reform to produce true changes in daily operations.

We believe that this praxis-focused method of evaluation is the most appropriate, at least initially, for a number of reasons. First, it presupposes all of the final objectives proposed. In other words, everyone who expects something from the reform expects it as a product of the change in the different components of the operational paradigm. Second, we believe that this approach is capable of delivering information that will be useful for the reform process itself, especially with respect to identifying deficiencies or aspects that are resistant to change and designing interventions to overcome them. Third, this method of measuring the results of the reforms is based on very concrete, identifiable, observable and quantifiable factors that also allow for a cross-country comparison of realities that are sometimes quite diverse.

As stated previously, this is just the first step in an evaluation process that must necessarily be broad in terms of the participants, and comprehensive in terms of the dimensions to be evaluated. We believe that once we establish the extent to which change has taken place, a second phase of evaluation is warranted to verify the relationship between the change produced and the objectives and expectations that justified the reform. This second step is as important as the first because the work of the reform has thus far been based only on assumptions, at least with respect to some of the ultimate objectives, which are generally related to the issue of governance, democratic stability, and the quality of life of the people. What remains outstanding, therefore, is to move beyond speculation and discuss in empirical terms the degree to which the reforms that have actually been implemented – as opposed to those that are still in the design phase – have had an impact on these objectives.

The processes of criminal justice reform in Latin America have been developed within the context of a rather fluid exchange of information and ideas among various legal communities. However, this dialogue has generally not covered the countries' different implementation experiences, essentially due to the shortage of information produced on these very processes. We hope that this project will constitute a step toward placing these topics into a region-wide comparative discussion that will be useful for reciprocal learning.

II. METHODOLOGY

The methodology used to collect information was designed through a cooperative effort, based on a proposal by the project's managerial team. The different national teams participated in the first meeting that was held in Santiago, Chile with the objective of defining the information considered relevant for collection and to reach an agreement on the type of methodology to be utilized in the study. Based on the agreements adopted in this meeting, the team that directed the project prepared a proposal of data-collection

instruments. Those instruments were then discussed, corrected, and finally approved during a second meeting, also held in Santiago.

The final methodology was conditioned by a number of elements originating from the general objectives of the study, as well as by the limitations of time and resources necessarily involved in this type of study. Taking these conditions into account, two data collection instruments were prepared.

The first instrument was a rather broad questionnaire regarding the substance of the proposed procedural reform, the way in which it was implemented, and the manner in which the new system functioned in practice.[1]. The questionnaire was to be completed according to a methodology designed to collect empirical information through a set of activities, such as visits, observations, and interviews with the different parties involved in the criminal justice system. Further, all of the official documents of the agencies involved in the reform and all available studies with relevant information were also collected and used in the process.[2]

The first part of the study does not claim to be representative in a statistical sense, rather, it aims to give a general overview of the operations of the new procedural systems. Its reliability depends upon the scope and variety of the sources of information used, as well as the experience and the accumulated knowledge of each of the working groups with regard to their respective systems.

The second instrument was a set of guidelines for reporting on the observations of oral trials that took place in the courts corresponding to the jurisdictional territory. The observers were asked to answer a series of questions relative to the ways in which the trials were conducted, as well as the history of the case being tried.[3] The guidelines were intended to gather information on the specific methods used by the judges in each location under study, particularly with respect to the attitudes of the different parties during the trial, the types of cases received by the court, and some of the background information relative to the steps that had been taken to reach that stage of the process.

The trial observations were aimed at including all of the proceedings that took place in a given jurisdiction during a one-month period in order to have a sample broad enough to show the standard practices of that judicial system. Obviously, while this sample clearly represents the period observed, it may not necessarily reflect the entire year. However, considering that practices tend to be homogeneous within a given legal culture, this appeared to be a good approach for determining the way in which this very important (and characteristic) step of the reformed systems operates. Each team then used the guidelines to prepare a report explaining the results of the trial observations. These reports later provided the basis for the comparative analysis.

Once all of the national reports were completed, the information was validated through consultation in the form of a discussion group. This group was composed of various authorities on the reformed system, academic experts and others with experience in the

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[1] This questionnaire and all of the project's official methodological instruments (base document, general instructions, guidelines for observations, etc.) are available for consultation at: www.cejamericas.org/navega_ceja.php?pag=estudios_011.html

[2] See "General Instructions" in *Op. cit.* note 1.

[3] See "Observation Guidelines" in *Op. cit.* note 1.

operations of the new criminal justice systems. The meetings provided the opportunity to reconcile the information and to correct any errors made during data collection, as well, on some occasions, to provide greater precision and detail in the information presented. Each of the data collection teams was also supervised by the head team, which visited the countries involved and obtained complementary information directly.

The final stage was to present the national reports for discussion in a seminar that took place April 3-4, 2002 in Rio de Janeiro, attended by the directors of all the local teams, members of the criminal justice systems of the four countries involved, and various other parties involved in the justice reform processes in other Latin American countries.

III. SUMMARY OF THE NATIONAL REPORT RESULTS

Each of the local groups and institutions was responsible for preparing the national reports. The Justice Studies Center of the Americas (JSCA) sponsored that work and in some cases provided the financial support necessary for its completion. Nevertheless, the conclusions were to be the responsibility of each local group, which was also responsible for later publishing and distributing their reports. Copies of these reports are available through the JSCA web page: www.cejamericas.org

The present document attempts to systematize some of the primary conclusions drawn from the descriptive sections of the national reports, in an attempt to extract the strengths and weaknesses of the processes of implementing the criminal justice reforms. The information used here comes directly from the national reports, although a full and detailed understanding of this document may require cross-referencing with one or more of the national reports. Notwithstanding, and with the objective of facilitating the reader's comprehension, summaries of the four national reports are included here in an attempt to illustrate the principal conclusions, particularly those that we feel are most important for a comparative analysis.

We also present a summary of the information contained in the national reports that details the trial-observation process that took place over a one-month period in each of the jurisdictions under study. The information provided deals with the issues directly related to the trials, such as data pertaining to the total number of the trials that were the object of the study and the total of those that could not be observed. It also provides background information for related matters before and/or after the observed trials.

Although a common methodology was employed to prepare the national reports, they show significant differences in their results, particularly in the more qualitative aspects. These variations may be due to a number of factors, such as the personal style of the author, and the criteria that he or she felt were most important in comprehending the process that took place in that particular country. A second reason for the differences is that, despite the fact that the reform processes are quite similar in design, there are significant differences among them, specially in the implementation stage. Finally, the teams that have worked on this project are composed of individuals who have been very involved in the reform processes, particularly in debating their normative aspects. Their degree of familiarity with the empirical work is therefore not homogeneous, and this is

reflected in disparities in the amount of detail they are able to provide in their explanations of the true workings of the systems.

CHILE

1. Descriptive information

a) *General aspects*

Chile's reform process began recently and was implemented gradually. In fact, at the time of the data collection (September 2001), the new criminal justice system had only been in place for nine months and was effective in only two of the nation's thirteen regions, precisely the two under observation. The system plans to incorporate new regions each year, concluding in 2004 with the incorporation of the Metropolitan Region, which includes the city of Santiago.

Description of the jurisdiction observed[4]:

According to preliminary data of the 2002 census, Chile's Fourth Region has 600,363 inhabitants. In the year 2001, a total of 34,965 cases corresponding to 36,436 crimes entered the Public Prosecutor's Office. Of the cases initiated, 22,065 were concluded.

The 2002 Census cites a preliminary figure of 864,929 inhabitants of the Ninth Region, where 62,396 cases (65,925 crimes) entered the system in 2001. Of the cases initiated, 48,229 were concluded.

With respect to the parties involved, the Fourth Region has 23 prosecutors and 18 judges: nine *jueces de garantía*[5] and nine trial judges. The Ninth Region has 36 prosecutors and 27 judges (14 *jueces de garantía* and 13 trial judges).

The Chilean reform generally responds to the same characteristics of the other systems addressed in this study. Its primary legislative expression is the new Criminal Procedure Code, which establishes the introduction of an oral trial before a panel of three judges as a central means of judgment, thereby eliminating the figure of the instructional judge/*juez de instrucción*[6] and giving the task of preparing the trial to the Public Prosecutor, supervised by a *juez de* garantía, whose position was expressly created for this purpose. The new Code also provides the Public Defenders with a number of powers that allow them to employ alternative, non-traditional procedures to negotiate solutions and alleviate the judicial system from the excessive number of cases normally presented.

One striking aspect of Chile's reform process was the creation of entirely new entities to take charge of both the prosecution and the public defense. The courts themselves underwent significant systemic reforms as well. The jurisdictional functions were affected by creating two new types of judge. With respect to the administrative area, a

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[4] Information regarding the number of new and completed cases, as well as the number of prosecutors was taken from the Justice Department web page: (www.ministeriopublico.cl). The number of *garantía* and oral trial judges was taken from the Judicial Branch web page (www.poderjudicial.cl), and the population information came from Chile's National Institute of Statistics (www.ine.cl).

[5] This "Jueces de garantía" are judges whose main task is to oversee the investigative phase and to control the legality of the evidence before the oral trial.

[6] The "juez de instrucción" is a classical figure of the continental law system. This judge has the task of conducting the investigative phase, acting in some cases as a prosecutor and a judge.

new managerial system was established, thus eliminating the traditional office, and replacing it with collective offices that incorporate all of the judges of a particular category in each city and that are managed by a specialized group of professionals.

Chile's reform process is generally characterized as being systematic, gradual, and well-financed. All of the institutions have begun to hear cases under the new system in accordance with a rather detailed plan for the process of installing courts, prosecutors and defenders, organizing training programs for all parties involved, and providing new or specially-conditioned facilities for the new functions.

The gradual implementation in the Chilean case has meant not only that the reform will become progressively effective in the different regions of the country, but that the new system is applied only in cases of crimes that have occurred after the new Code took effect. Crimes committed prior to that date continue to be dealt with under the old court system in courts that are either progressively converted to the new system or whose jurisdiction will remain limited to non-criminal cases.

Due precisely to the conditions under which the implementation process has taken place, the report emphasizes that the new criminal procedural system is generally functioning well and that the new institutions are both highly motivated and largely in compliance with the new functions that the law has entrusted to them. In consequence, it is necessary to point out that the critical observations contained in the national report and summarized here are framed within the general context of an implementation process bearing great strengths.

b) *The Courts*

The installation of the new courts has provoked very marked increases in the financial budget created for this purpose, and will stimulate even more increases as the process of application extends to incorporate more regions. In effect, the expenses of the new courts began in 1999 with US$ 5.9 million. In 2000 that figure rose to US$12.4 million, and in 2001 it reached US$36.1 million. The Public Prosecutor's Office has also had a similar progression that began with US$118,000 in 1999, jumping to US$4,800,000, and reaching US$18.1 million in 2001. The Public Defense, which was formally installed in 2001[7], received a total of US$6.6 million that year.

The first issue that the report addresses in detail is the management of the new courts. As previously mentioned, court administration was the subject of reform, essentially by creating unified systems with administrative professionals. Observation of these new court management systems in operation revealed significant weaknesses in terms of their effectiveness. The professionals recently hired for these positions, many of whom come from sectors other than judicial systems, share the general perception that their task has been made difficult for a number of reasons.

The first problem appears to be the judges' resistance to accepting an administrative function not involving any judicial discretion. They are even less willing to accept the idea that a manager expects them to comply with technical definitions of their responsibilities which have been created and imposed by management rather than by the

[7] Before its installation, the Public Defense Department operated as a provisional program of the Department of Justice.

judges themselves. In fact and in practice, the administrative authority appears to have been weakened in this respect as the judges feel that they are in a position to impose their own criteria when defining the administrative aspects of their work, such as issuing summons and scheduling hearings.

A second significant problem seems to be the fact that the central national-level court management body, the Judicial Branch Administrative Corporation[8], has made it difficult for the new administrative systems of each court to operate with the autonomy necessary to develop their full potential. To the contrary, it imposes restrictions upon the local administrations, for example, with respect to the budget, and this makes it difficult to improve the efficiency of each unit.

As previously stated, Chile's new system has the benefit of special facilities, at least in all of the major cities. In some cases, this implies new buildings specially designed for this purpose, while in other cases, existing buildings have been remodeled for use while new facilities are constructed. The equipment is also new, including a computer system to track the cases. All of the judges and the employees in positions with some degree of responsibility have computers, Internet access, and e-mail, which they regularly use both internally and to communicate with other parties involved in the system. This medium is increasingly becoming the primary means of issuing summons.

The new courts' administration systems are developing the ability to produce their own statistics, although the quality and quantity of the information produced varies significantly from one court to the next. This has also been complicated by an excessive hierarchization of the judicial system. In fact, the trial court created a very informative web page that was ordered dismantled by the Supreme Court for lack of prior authorization.

Each court must define its own system for distributing the cases among the judges. To date, these systems have been generally limited to simple rotational mechanisms that are, in effect, too rigid to maximize the use of the judges' time.

It appears that the new system does not generate a practice of delegating judicial functions, probably due to the fact that all of the important decisions are handed down in public, oral hearings. The report expressly mentions the fact that the most important resolutions of the preparatory stage occurring during these hearings is one of the greatest achievements of the new system. The hearings are organized and take place daily. They are attended by the different parties who present their arguments, and the judges then rule in this setting.

Within the context of the success of the oral advocacy model, there are some difficulties worth mentioning. The first is that all of the parties of the system recognize the existence of a problem with the system of summoning the parties to the hearing. There still does not appear to be a sufficiently expeditious system capable of reducing the number of non-appearances to a minimum. The major defect in this area seems to be the persistence of a formal conception of the summons that focuses more on complying with the procedures than on the objective of obtaining more appearances through the use of all available measures, particularly the most practical. The second significant

[8] The Judicial Branch Administrative Corporation is a centralized body of the Supreme Court that controls all of the administrative aspects of the operations of the country's courts of justice.

problem observed is the difficulty of the courts to absorb a growing case load. Although the volume of hearings is still not considered high, the system is already beginning to show scheduling problems, an increasing number of adjournments, delays, and general coordination problems, again a sign of the weakness of the court management systems. The litigating bodies, particularly the Public Prosecutor's Offices, lack flexibility with respect to assuming an increase in the needs of court appearances, which in turn generates excessive delays and less time available for other tasks.

Despite the fact that the model of litigation in hearings seems to have been successfully implemented, judges often impose formalistic practices that lengthen the hearings, suppress their dynamism, and require unnecessary steps that prolong the tasks of preparation. These practices encompass a broad spectrum of procedures, such as requiring the use of sacramental phrases, providing known or irrelevant information, presenting written petitions, and formalistic interpretations of the summoning procedures. This formalism carries through to the recording of the trial hearings, which by law must be complete and audio-recorded. Preliminary Audiences, in contrast, are not required to be recorded in their entirety. Some judges, however, have demanded they be written and formalized, although no one has expressed interest in the result. Some courts have even required that the written record be prepared by a lawyer.

The oral trial represents the paradigmatic innovation of the Chilean reform. It is not only the feature most recognized by the public, but it also conditions the other institutions which, at least in theory, should always be logically ordered in relation to the oral trial, the primary means of judgment. Two types of oral trial were established in Chile. The most characteristic, referred to in the Code as the 'oral trial', is that which takes place in the criminal courts before a tribunal of three judges. The second option is the so-called 'simplified trial', which is also an oral trial, but which takes place before the *juez de garantía*, when the sentence requested by the prosecutor does not exceed 540 days of confinement.

In practice, there have actually been few oral trials during the first stage of the reform, and of the few that did take place, the majority were prepared according to the simplified procedure. As of September 2001, only 22 oral trials had been heard before the three-member court, while more than 80 simplified trials had been held.

One of the factors that may explain the low number of trials is a certain initial reluctance on the part of the prosecutors to take cases to court when the strength of the evidence is insufficient to ensure a significant degree of probability of conviction in the case. This will probably correct itself over time, however. It also appears relatively clear that the initial calculations regarding the number of three-member oral court judges required in fact exceeded the actual necessity, resulting in a rather negative impression of the inefficient use of resources in that there are many judges and high-quality equipment for low workloads. The authorities, however, appear to be surprisingly slow to react to this situation and correct it. To the contrary, they have continued to appoint judges in the three second-stage regions, judges that have little or no work, at significant expense to the public.

Overall, the new system has introduced an enormous change with respect to the transparency of the judicial systems. The fact that all of the most important court decisions now take place in public hearings has resulted in a fundamental change with

respect to the written system. Major strides aside, there are still some persisting practices which, although in the minority, reveal a certain degree of reluctance toward operating in a truly open and public manner. For example, in some courts the researchers encountered difficulties in obtaining copies of court records for completed cases. Some courts also placed unjustified restrictions on the accessibility to public hearings, such as recording the national identification number of the members of the public, closing the door once the hearing had begun, or prohibiting minors from entering.

c) *The Public Prosecutor's Office*

Prior to its judicial reform, Chile had no institution that performed the function of public prosecution, and thus it was necessary to create the entirely new Public Prosecutor's Office. Shortly before the new Code became effective, the department was formed, which then had to recruit both its managerial staff as well as all of the prosecutors and administrative personnel necessary to carry out the new functions in the first two regions included in the reform process. Due to these very special circumstances, the definition of the Prosecutors' work is still being developed.

The majority of the prosecutors are young professionals with little experience in the area of criminal justice, but highly motivated with respect to the reform process. The public prosecution offices in which they work vary substantially in size; some have only one district attorney, while others have four or even seven in the larger cities already included in the reform process. The workload is usually distributed via a rotational system and only very recently have other means of distribution begun to appear, largely as a result of prosecutors who prefer certain types of cases, particularly drug-related cases.

There is no screening system in place to evaluate incoming cases; rather to the contrary, each prosecutor has a good deal of independence in making decisions regarding his or her cases. There is no formal supervisory system for the prosecutors who are formally considered office heads either, although the regional offices have recently begun to develop stronger support systems for the individual prosecutors, essentially through the regional prosecutor's advisory attorneys.

Some problems have been observed in the early stages of prosecutors´ case preparation, particularly with respect to coordination with the police department, although this seems to be quite variable and site-specific. One of the most significant problems generated, for example, is the need of the Public Prosecutor's Office to repeat administrative tasks already completed by the police due to problems in the way the information was transferred (the content of the police report needs to be re-typed in the Public Prosecutor's Office). Another example is the lack of clarity in what is expected of the police when there is a disparity of criteria among the different prosecutors.

As a result of some of these problems, the Public Prosecutor's Office seems to be limited in its ability to make early decisions with respect to cases. This was one of the most important objectives in the design of the new system, and, at least from the planning perspective, some of the most important expectations of the change were associated with its compliance, such as the speed in processing cases and focusing

resources on the more serious cases. The figures available at the time of the study showed that 54% of the cases were pending, which is much higher than predicted, as it was supposed that a large number of the minor cases with little or no expectation of success would be closed quickly. On the contrary, it seems that the organization of the work described above, as well as the lack of clear definitions from the higher levels, tends to decrease the incentive to make early decisions, thereby requiring the prosecutors to maintain the cases open, investing time and effort in cases that do not merit such attention. On top of this, managing the expectations of the victims also contributes to this problem. Not everyone is willing to accept an "early explanation" that their case has little possibility of success or that due to its onerousness, it does not justify investing the kinds of resources that an uncertain prosecution would require. Apparently there is no guiding policy in place for these types of situations and the prosecutor must handle them personally, and thus often resorts to entering into high-cost activities for the sole purpose of limiting the level of frustration of the affected party.

The prosecutors and other parties of the system submit that the Public Prosecutor's Office has saturated their capacity for work; every prosecutor encountered at the moment of the study – less than one year from the beginning of the new system – was handling an excessively large case load. It is truly difficult to clearly evaluate the situation because the true volume of current cases appears to be distorted by the tendency to allow cases to remain open that do not, in reality, require current work.

The Public Prosecutor's Office has a computerized case-tracking system that has presented some operational difficulties during this first period and therefore at the time of the study was not yet capable of generating reliable figures in a timely fashion, but the problem is being resolved. The prosecutors generally complain of having major problems with the administrative support system and having to dedicate inordinate amounts of their time to tasks that could be handled by less-highly trained personnel.

The district attorneys also have a professional administrator who seems to face problems that are somewhat similar to those experienced by the court managers, in that they are forced to work within a very restrictive system imposed from above, which impedes maximizing the efficiency of each unit.

In the new system, the prosecutors have a set of possibilities for resolving cases using alternative, non-traditional means that include shorter proceedings, agreements (plea-bargaining?), and some powers of dismissal for different reasons. In each case, the law regulates the requirements and controls for each of these forms of resolution. The Public Prosecutor's Office has also provided basic guidelines to establish the criteria for applying these types of resolution, which usually implies further restrictions in addition to those established by the law, particularly when dealing with serious crimes.

One of the general problems presented by this type of regulation is that it was derived from criteria that were rather abstractly-defined at the beginning of the implementation process and do not respond to specific problems, nor do they consider the cumulative experience that the prosecutors have now acquired. In other words, the head of the Public Prosecutor's Office tends to perceive his or her regulatory authority as a reflex to the legislative activity, and not as the ability to respond based on concrete knowledge.

One of the regulations that is surprising due to its restrictive character concerns reparatory agreements, in which the Public Prosecutor's Office has established procedures in addition to those specified by law, including requiring the regional unit to prepare a report on the victims and witnesses and expressly prohibiting prosecutors from engaging in mediation or settlement activities. Another regulation that seems to contribute little to creating a more flexible system is the conditional suspension of the proceedings. Prosecutors are instructed not to take this option in the early stages of the proceeding, but rather to reserve it for the end of the investigation.

In addition to the restrictive regulations imposed by the Public Prosecutor's Office, the use of alternative dispute resolution mechanisms is also restricted by judicial criteria. Many judges tend to formalize their control and carry it to the fullest extent. Some judges have refused to approve reparatory agreements when, for example, the case history does not establish criminal responsibility of the accused. Another significant example occurs when the accused enters a guilty plea, which is equivalent to waiving an oral trial, in exchange for the prosecutor's guarantee of a specific maximum sentence. In this procedure, which is not available in cases where the sentence exceeds five years of incarceration, judges have tended to develop restrictions beyond those imposed by the law. When handing down their ruling, they demand that the prosecutor present a file prepared in accordance with the same parameters of the old inquisitory system. The result is that rather than being a simpler system for the prosecutor, it ends up being slower and more formalistic.

Another option available in the new system is the *juicio inmediato*[9], for use in cases where the accused is caught *en flagrante delicto,* or in cases where the evidence appears to be complete from a very early stage, in which case the date for the trial is appointed at the time of the hearing for presenting the charges. This avoids the procedures and formalities that are only necessary when the preparation of the case is more complex. In practice, as a result of the logical inability of making decisions too early on, and a general tendency to formalize proceedings, this procedure was not in use during the period of the study.

One of the major problems that has affected the reform process is related to the work of the police department. According to the report, the work of the investigative police (detectives specializing in criminal investigations) and the specialized criminal investigative units of the uniform police, the Carabineros de Chile, has been relatively efficient. In contrast, however, the non-specialized uniformed police, who comprise the majority of the force and who have received only a minimum of training, have had significant difficult adapting to change.

Problems with police officers in this group include resistance to change, a lack of understanding of that change, and a great deal of reluctance toward accepting the restrictions on their power implied by the reform. The presence of a specialized defender from the first court appearance on, and the holding of an adversarial hearing before a judge just a few hours after detention seem to have substantially altered the situation in the first two regions. Apparently, instances of police abuse have been greatly reduced, although some complaints still persist. Police interrogation practices also seem to have been strongly limited.

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[9] The *juicio inmediato* means that the accused is going to be taken to trial in a very short period since the hearing for presenting the charges. Juicio Inmediato means "immediate trial" .

These same difficulties which have appeared with the non-specialized police officers have also been passed on to the public, who tend to believe that the police now has less authority than before. This has generated greater impunity for crime, particularly for minor offenses that are not usually the object of specialized investigations but rather detentions by specialized police.

This situation has generated significant public pressure, such that during the first year, the government created a commission to study the problem and propose solutions. Legal reform was proposed in order to clarify the controls of police power. A training program for uniformed police officers was also recommended.

The relationship between the Public Prosecutor's Office and the Police Department has been subject to a number of different understandings. One group of prosecutors emphasizes the idea of the objectivity of the Public Prosecutor's Office and tends to conceive themselves as employees with a certain degree of control over the work of the police. This attitude causes the prosecutors to be very strict in controlling the formal legality of police activity and even to frequently discard the results of the police work when it contains errors. Another group places greater emphasis on the prosecutorial function of the Public Prosecutor's Office, leading to prosecutors with a greater commitment toward police work and attempts to defend it before the judges. These prosecutors tend to concentrate more on the substantive aspects of the police work. For example, when the prosecutor considers the information obtained to be valuable and true, he or she will attempt, within the framework of the law, to overcome the occasional problems or errors that may have been committed during the obtainment of the evidence.

d) *The Public Defense*

As in the case of the Public Prosecutor's Office, the reform in Chile required the creation of a completely new system for criminal public defense. This system, however, began its implementation later than the other the institutions. In fact, the new law that created the criminal public defense system took effect after the new Criminal Procedure Code was in place, and its implementation is still not complete. During the early months of the new system, the public criminal defense operated in effect as a provisionary program of the Department of Justice, although with the same managerial staff and personnel that later became incorporated into the system once it was formally created by law. It is worth pointing out that this provisionary system was very efficient in its early months, especially in the flexibility that allowed it to respond to the initial requirements.

The system envisioned under the law has not yet been completely implemented, not even in the first-stage regions. The model that is in place includes the provision of defense services through a combination of mechanisms including staff defenders and cases assigned to private sector attorneys who bid on them. In fact, only the first part is functioning, and the specific operating mechanisms of the second part are still in the design stage.

In practice, the defenders begin their involvement when the accused is brought to his or her first court appearance. In accordance with the law, he or she has the right to legal

counsel while in police custody. However, the public defense system does not provide this service to those who do not have their own attorney. In some cases, the defender is assigned directly by the *juez de garantía*, in others, he or she is assigned by the head of the local Public Defender's Office, based on criteria for distributing the work load. There are also cases in which a rotating system is used. In all cases, the defender has the opportunity to interview the client before the first appearance and has access to the file of background information compiled by the prosecutor, except when some part of it has been declared secret. These cases, however, can always be protested before the judge. The means by which the defenders can access information from the prosecutors has been the object of continuous dispute, but in general, the defender has the information at least a few minutes before the hearing.

The implementation of the Public Defender's Office has benefited from significant resources that have allowed it to fulfill its duties reasonably well, with well-suited and motivated personnel. It also has the necessary administrative support, computer systems, and modern communication methods, such as fax and e-mail. However, the Public Defender's Office does not normally have access to the considerable resources necessary to pursue independent investigations; however, in some cases, it has been able to obtain the support of investigators, photographers, artists, and expert witnesses, which involves a special request for resources from the Public Defenders Office.

The performance of the defenders is supervised by the regional defender, and this process appears to be in practice quite intensive, requiring the defenders to account for all of the hearings in which they take part. The regional defenders also investigate the quality of the work of judges and prosecutors. There is also a judicial procedure by which the accused can protest the performance of the defender and on occasion request a replacement. The complaints received have not generally been serious, and the requests for replacement have been petitions for the assignment of a defender who attended to that person in the past. It can also be done administratively, directly through the regional defender, but this method does not appear to have been employed.

There is significant and general recognition of the success of the public defenders in establishing themselves and complying with the intended function of the office in a very short period of time and with substantially fewer resources than those received by the courts and the Public Prosecutor's Office. However, there is also a certain degree of agreement in recognizing that many of the defenders have been rather passive in performing their duties and that they do not actively exercise the full extent of their powers. It is generally believed that the defenders concentrate their attention on the social conditions of the accused in order to avoid pre-trial imprisonment or to establish some extenuating circumstances, but that in the majority of the cases, they do not challenge the evidence presented by the prosecutor, nor do they present their own.

e) *The Victims*

The new Criminal Procedure Code establishes a series of new rights for victims of crime. In practice, some of them have already proven quite successful. For more serious crimes and more vulnerable victims, the Public Prosecutor's Office has a specialized unit for victim support, focusing on their participation in the criminal process. It also plays an important role in placing the victim in shelters, facilitating police contact in the

event of future attacks, accompanying them to judicial procedures, and providing general information services and orientation.

The victims have also been heavily incorporated into the discussion of pre- trial restriction of liberty. Although in the previous system, the law formally included a clause that established the protection of the victim as an element to consider in the decision of pre-trial imprisonment, in practice it did not function as such. In the new system, however, the protection of the victim is one of the primary elements considered with respect to preventative measures. However, because there is no efficient system of controlling the non-incarceratory measures, there is the general sentiment that imprisonment is the only efficient method of protection.

Furthermore, the design of the reform placed great emphasis on restitution as a means of repairing the harm done to the victim. However this mechanism has had a very limited recurrence, and only 0.3% of the cases have concluded in this manner.

f) *The preventative measures*

There seems to be consensus that the recent discussion about preventative measures and the introduction of a series of alternatives have been successful in reducing the use of pre-trial imprisonment. In practice, the available information indicates that during the course of the first year, an average of only 16% of the accused were held in pre-trial imprisonment, while 38.7% were subjected to less intensive preventative measures, and 37.2% were not subject to any restriction of their freedom.

There are no figures available to determine the average duration of the preventative measures. However, the *jueces de garantía* generally establish a time frame in which the charges must be presented and push for a quick trial. In the trials observed, the average delay between the presentation of the charges and the beginning of the trial was 250 days for the trials heard before the panel of three judges, i.e. those that involve pre-trial imprisonment due to the seriousness of the crime.

2. Quantitative information

The following is a selection of information obtained during the observations of the trials in the Fourth and Ninth Regions of Chile. More detailed information is available in the individual national report.

The Chilean study concentrated on observing oral hearings in two different types of proceedings. The first type was the simplified proceeding, which is an oral trial heard before a single judge when the prosecutor requests a sentence that does not exceed 541 days of incarceration. The second type is the regular oral trial, which refers to all those in which a longer sentence is requested and which are heard before a panel of three judges. In some cases, a distinction is made between the two categories upon the presentation of the facts, while other cases appear to be added later, depending on the relevance of the distinction in relation to the facts presented.

The observation period took place from September 5, 2001 to October 12, 2001.

Of a total of 35 trials scheduled for that period (9 oral trials and 26 simplified proceedings), 28 were actually heard (8 oral trials and 20 simplified proceedings). Thus 7 trials were not heard (6 simplified and 1 oral).

The primary causes for a trial not taking place as scheduled included problems with the decree of commencing, the failure of the accused to appear, and the failure to summon/notify the parties involved.

Of a total of 29 accused, 9 in oral trials and 20 in simplified proceedings, 1 of the latter was settled in a simplified proceeding, 5 were acquitted (17,2 %), and 23 were convicted (79,3 %).

Of the total number of convictions, in 13 cases the sentence applied coincided with that requested, and in 11 cases, it did not. From these cases, in 9 the sentence imposed was less than the one requested, and in 2 cases it was greater.

Of the 28 trials observed, 26 (92.9%) had no plaintiff, while only 2 (7.1%) did.

Of the 29 accused who underwent an oral trial, 21 (72,4 %) were found to be *en flagrante delicto*.

No civil action suits were presented in the oral trials.

With respect to gender, of the 29 accused, 26 (89,7 %) were men and 1 (3,4 %) was a woman, while no information was available for the remaining 2 cases.

Regarding age, only 1 of the accused (3.4 %) was in the 21 or under age group; 6 (20,7%) were 21-30 years old; 15 (51,7%) were 32-50; and only 4 (13,8%) were 50+. No information was available for the remaining 2.

With respect to employment status, 5 (17,2%) of the accused were unemployed; 9 (31,1%) were working or employed on an occasional or informal basis; another 9 (31,1%) were full-time employees; and the final 3 (10,3 %) were professionals with some higher education. In 3 cases there was no record of employment.

Of the 29 cases observed, 25 (86,2%) of the accused relied on the Public Defense, while only 4 (13,8%) retained private counsel.

The minimum and maximum time lapse between the appointment of the counsel and the commencement of the oral trial was as follows: in the 8 trials before the panel of three judges, the minimum time was 60 days and the maximum was 250 days, with an average of 70 days. In the 20 simplified proceedings, the minimum time was 1 day and the maximum 55 days, with an average of 29 days.

The number of pre-trial interviews between the accused and the defense were as follows: of a total of 29 cases; in 5 (17,2%) the accused had no pre-trial interview; all of these cases were resolved in simplified proceedings. In 10 cases (34,5%) one or two interviews took place; in 9 (31,1%) cases the accused saw the defense attorney three or more times; and in 5 cases there were no records.

With respect to the duration of the proceedings, in the cases resolved by oral trial before a three-judge panel, the minimum time elapsed between the commitment of the crime and the beginning of the trial was 120 days and the maximum was 285, with an average of 196 days. For those cases resolved via a simplified proceeding, the minimum was 60 days and the maximum was 250, with an average of 125 days.

In the 8 cases resolved through an oral trial before three judges, the minimum time between the accusation and the commencement of the trial was 110 days and the maximum 250, with an average of 175 days. In the cases resolved through the simplified proceeding, the minimum time lapse was 21 days and the maximum 145, with an average of 46 days.

In the eight cases involving an oral trial before three judges, the minimum time between the indictment and the oral trial was 25 days and the maximum, 70 days, for an average of 46 days.

In only 7 of the 29 cases (24,1%) was the accused subjected to pre-trial detention, all of which were tried in an oral trial before three judges. In the remaining 22 cases (75,9%), the accused were not subjected to this preventative measure. The average time of pretrial imprisonment was 6 months. In only 2 cases was the accused subjected to preventative measures other than imprisonment.

Only two motions for dismissal were presented, both by the defense.

In 1 of the eight trials observed before three judges, one complainant presented an accusation beyond that of the Prosecutor; in the remaining 7 cases (87,5%), the charge was sustained by the Prosecutor alone.

Of a total of 279 items of evidence presented by the Prosecutor, 70 (25.1%) were witnesses, 20 (7.2%) were expert witnesses, 84 (30.1%) were documents, 93 (33.3%) were photographs, and 12 (4,3%) were objects.

Of the 44 items of evidence presented by the Defense during the trial, 14 (31,8%) were witnesses, 29 (65,9%) were documents, and 1 (2,3%) was a photograph. No experts or exhibits were presented by the Defense.

The only complainant involved did not present any evidence.

In the cases resolved in an oral trial before three judges, the hearings averaged 4.5 hours in length. In the cases heard in simplified proceedings, the hearings averaged 54.5 minutes.

In the oral trial before three judges, sentencing took an average of 4.75 days from the end of the hearing. In the simplified procedure it was observed that the process also took place an average of 4 days to complete. .

Of the total number of hearings observed, 15 (79%) were attended by the public, while no spectators were present in only 4 (21%) of the trials. An average of 17 spectators were present during the trials observed.

CORDOBA, ARGENTINA

1. Descriptive information

a) *General aspects*

Because Argentina is a federal republic with diverse procedural and judicial systems, the study was conducted in Cordoba, a province characterized by a long tradition of judicial reform. The criminal justice system reform dates from 1940, the year in which oral advocacy was introduced into the criminal process. This marks a very important reference for all of the subsequent reforms that have taken place in other parts of Latin America.

According to the provisional data provided by the 2001 census, the population of Cordoba (the capital city) is 1,282,569 inhabitants.[10]

We found a total of 56 judges, defined as follows: 6 single-judge courts (whose jurisdiction extends to cases whose punishment is under three years); 11 Criminal Appeal Courts of 3 judges each, 8 single-*juez de garantía* Courts; one Prosecution Court, which consists of 3 judges, and 6 single-judge Juvenile Courts.

We found a total of 50 prosecutors, as follows: 6 prosecutors for cases with a punishment under 3 years, 11 court prosecutors, one Prosecution Court prosecutor, 26 district prosecutors and 6 juvenile court prosecutors.

With respect to public defenders we found 16 assistant lawyers working not only on criminal matters, but on civil, labor and juvenile matters as well.

Regarding the introduction of cases in the Cordoba province, statistics were only available for the year 2000, which indicate the following: there were 13,153 cases submitted, with and without an arrest, for investigation by the Investigative Prosecutors (organized by district and chosen on a rotating basis). A total of 2,410 cases entered, with and without prisoners, into the Criminal Courts. There are no figures for the number of cases that entered the correctional courts. There were 979 debate hearings (Criminal Courts), 378 abbreviated proceedings (Criminal Courts), and a total of 1,139 cases (1004 sentences; 135 dismissals) resolved within the Criminal Courts.

The province of Cordoba underwent a second criminal procedure reform, which took effect in 1998. The goal of this reform was to strengthen the accusatory nature of the criminal process, to establish a more adversarial type of trial than had been regulated under the previous Code, to introduce the use of juries in some cases, to turn investigations over to the Public Prosecutor's Office, and to eliminate judicial investigation, except for prosecution of people with constitutional privileges. Moreover, the Law Number 8802 was passed in 1999, effectively creating the Provincial Judiciary Council. The Council is intended to be the key instrument for

[10] National Census on Population, Homes and Housing 2001 – Provisional data. INDEC, Argentina. The total population of the province of Cordoba increased in 2001 to 3,061,611 inhabitants. This data is available at http://www.indec.mecon.ar/censop2001.

selecting judges. This institution is currently in the transitional phase due to the short period of time it has been in existence.

The study was conducted with a fundamental reference to the 1998 reform and covers the judicial system of the city of Cordoba. In other parts of the province the system has not yet been fully implemented, due to the lack of Judiciary Police, who have also been part of the reform process.

b) The Courts

There are three types of courts with criminal jurisdiction: *Tribunales Correccionales*, which function as single-judge courts and where sentences, in cases where punishment is applicable, do not exceed three years of imprisonment; *Control de Garantías* Courts, and the Criminal Courts, which deal with more serious cases. Criminal Courts can be constituted in different ways, depending upon the kind of case brought before them. The court can have one single judge or a panel of three. The decision regarding the composition of the court is made on a case-by-case basis by the full court of judges. However, the accused always has the right to oppose a single-judge court which, in fact, is the norm. If the sentence for a specific case exceeds fifteen years of imprisonment, the court is made up of three judges plus two laypeople who have the same power as the judges and who are chosen – at the request of the parties – from the voter registry. It is worth mentioning that only 16 jury trials have taken place since the jury system was introduced in Cordoba in 1995. Thus, the impact of this institution on the daily functioning of the system is not very significant.

The reform process in Cordoba has been accompanied by significant efforts to improve the infrastructure and administration of the courts. In fact, the courts are housed in a very modern new building. Employees have access to computer systems. Within the courts there is a centralized office for issuing summons and another office in charge of relations with penitentiary services. Nevertheless, the bulk of the administrative work continues to be performed by administrative staff that report to each judge. In fact, each Criminal Court relies upon the services of two such secretaries, each responsible for the administration of a number of cases.

Case management by administrative staff has generally not been sufficiently modernized in relation to traditional systems. In fact, before oral proceedings were introduced, the process had been done entirely in writing. A wide range of functions are delegated as the written proceedings advance. In practice, the cases are distributed among employees who must incorporate all of the necessary elements into the file in a fairly standardized manner, all under the supervision of the judges. The real possibilities for attorneys to be granted an interview with a judge depends, to a large degree, upon the judges themselves. It is noted in the report that there are judges known for their "open door" policy, in the sense that they are generally willing to speak with attorneys.

Both the Correctional and Criminal Courts handle oral hearings rather informally. In fact, there is no schedule of hearings available to the parties or to the public. Normally the secretary uses a notebook to manage a very flexible schedule in which hearings are frequently cancelled and new schedules are improvised. It is therefore very difficult for

someone from outside of the system to have any certainty regarding when a trial will take place. The court secretary prepares a summary of minutes from these oral hearings.

c) *The Public Prosecutor's Office*

The reform attempted to make changes in the ways the Public Prosecutor's Office worked, seeking to bring it into line with the new responsibilities of the prosecutors. Prosecutors are now responsible for the investigation, which was formerly under the control of the investigative judges. The territory was therefore divided into districts, each of which now falls under the jurisdiction of a group of three to five prosecutor's offices. Each prosecutor's office is headed by a prosecutor "de instruccion" (Investigative Prosecutor). Cases are distributed among prosecutors within each district on a rotating basis. Each prosecutor also has a delegate, called a prosecutor's assistant in the corresponding police precinct. This assistant is in charge of the investigation and works in collaboration with the administrative police, who actually carry out preventative functions on the street.

Additionally, there are Court Prosecutors, who are different from investigative prosecutors. They are responsible for bringing charges before the oral courts. The workload is distributed among them according to a quota system and there is no connection to the way in which the work was assigned during the investigative stage. Thus, the cases prepared by a certain investigative prosecutor are not followed up by the same prosecutor, but rather by several. This division of work results in a lack of continuity for the prosecutors because the way in which the investigation is conducted by the prosecutor is often subject to different criteria than that of the court prosecutor. This may result in the latter having to either continue with a charge that is considered not very strong or directly request a dismissal, which is allowed in the Cordoba system. Moreover, the court prosecutor can and often does request the assistance of the Investigative prosecutor.

The work of the prosecutorial assistants in the judicial police units is not exactly investigative in nature. Rather, they are staff who investigate and incorporate information into the file that will be used in making decisions at a later stage. All of this is done under the supervision of the prosecutor. The actual operations are assigned to members of the administrative police. Within the administrative police there are so-called commissioned officers whose specific duty is to collaborate with the prosecutorial assistant and conduct the investigation. The prosecutorial assistant is then responsible for incorporating the information into the report, making decisions in conjunction with the prosecutor, and working under his supervision. The prosecutor and the assistant do not work within the same physical quarters; the former works in the prosecutor's office and the latter in the Judiciary Police unit. Communication between the two appears to be frequent and informal. Apparently, the degree of control the prosecutor has over the investigation depends upon the investigation's source. If it began with an accusation by police report, the assistant normally runs the investigation; however, if it is brought to the prosecutor's office by the prosecutor, it will usually be handled within this (unclear which office "this" is referring to) office, except when the assistant is directed to carry out some specific activity.

One of the specific goals of the Reform was to incorporate the prosecutorial assistants into police precincts in order to eliminate the so-called preventative investigation that was independently conducted by the administrative police, which had been criticized for instances of abuse and corruption. In practice, the administrative police do not have the authority to interrogate the accused, which limits their ability to perform investigative duties required by the prosecutor's assistant or the prosecutor. Although the law authorizes the prosecutorial assistant to take a statement, in practice it is taken in the Prosecutor's Office (either by the prosecutor or by another staff member of the prosecutor's office). This is a relatively formal process.

Significant resourcing in financing and training have been directed toward creating a system of prosecutorial assistants within the judiciary police in order to modernize the methods of police work. A computerized support system has been incorporated, as well as a self-evaluation committee to analyze the information and evaluate how well the system is functioning. Furthermore, specialized units have been created to investigate more complex or more frequent crimes, such as frauds, homicides, robberies and thefts.

Under the current system in Cordoba, prosecutors do not have the right to withdraw cases that they consider minor or unlikely to succeed. Nevertheless, in reality there is a system by which the Public Prosecutor sets priorities. The head of the Public Prosecutor's Office provides instructions that shape the criminal prosecution policy. He or she determines which cases will have priority treatment. Normally, a case will have priority if the accused is in custody. Otherwise, priority is given to cases in which public employees are accused or those that are considered more serious crimes. Those cases that do not fall under these criteria receive less attention and many are dismissed due to the statute of limitations. The type of cases that normally fall into this category are crimes such as threats, minor assaults, petty thefts and frauds, particularly when there is neither a complainant nor plaintiff.

The policies of the Public Prosecutor's Office, designed to increase the productivity of the prosecutors, also have an effect on the cases selected. There are incentives for each prosecutor to increase the number of cases that go to trial, (what incentives?) for example (in this context, the example should be of the type of incentive, not the type of case), cases in which the investigative stage has been completed and the case is passed on to the next stage. Prosecutors are therefore (nothing has been proved to use the idea "therefore") encouraged to devote more time to those cases that have a good chance of going to trial and less time to those with very little possibility. This policy has been criticized by court prosecutors because they believe that this encourages prosecutors to present cases that have not been fully investigated.

Despite the nonexistence of a way for a prosecutor to dispose of a criminal case, negotiation is allowed between the prosecutor and the accused. This is done in order to convince the accused to waive the right to an oral trial and allows an abbreviated procedure to take place, which involves sentencing based on the accused's confession and the waiver of the examination of evidence (part of the oral trial).

The law establishes two different ways for the abbreviated procedure to take place:

1) The initial abbreviated trial can proceed from the moment the accused is apprehended and turned over to the competent authority, and until the closing of the

preliminary investigation. The accused, in the presence of his or her defense attorney, may request an initial abbreviated trial on the charges for which he or she was arrested, provided that the investigative judge and investigative prosecutor agree. The petition is made after charges have been formally made, which may be based on being apprehended in the act of committing the crime (*en flagrante delicto)*, a confession by the accused, or existing evidence. In practice, this option is not used because the investigative or control judges resist the immediate consequences of participating in such an agreement and having to rule on it. Apparently this is because it would force them to take control of the sentencing.

2) The second way for the abbreviated trial to take place is during the trial stage, after the investigation has been concluded. This is used in approximately 60% of all cases that go to trial. It should be noted with respect to this point, that the reform merely recognized a practice that had already existed under the prior system, although it had not been ratified by law.

In addition to the abbreviated proceedings, another type of resolution based on the evidence has been developed in Cordoba, the so-called "short" trials. These are not regulated by law, but constitute a common and generally accepted practice. In short trials the parties agree to waive the evidence and simply present the case file. This is done in cases in which there are no substantial discrepancies concerning the facts but there is no confession either because the accused opposes some aspect, usually the classification of the crime.

Each prosecutor works autonomously and personally makes decisions affecting the progress of cases. These decisions tend to be narrower in scope than in other jurisdictions because the prosecutor does not have many alternatives. There is no direct supervision of prosecutors, but case activity statistics and visits made by prosecutorial assistant and the public prosecutor allow for some degree of control. This constitutes a means of monitoring the prosecutor's work and reconciling the records. External control also exists through complaints and the occasional trial by special jury created under the same law that established the Judicial Council.

Prosecutors have the authority to order that the accused be held in pre-trial custody. It should be noted that this right is one of the most controversial aspects of the present Code with respect to the original project, which never intended to confer this right upon the prosecutors. In the opinion of José Cafferata Nores, author of the preliminary reform proposal, granting this right to the prosecutors largely distorts the division of roles that is considered to be fundamental in an accusatory procedural system. Ordering pre-trial custody assumes that the legal situation of the accused has been resolved, in this case by the same body that receives and evaluates the evidence, thereby reproducing in the prosecution the same rights that were formerly granted to the investigative judge. The intention of the new Code was to change the traditional practice of automatically enacting pre trial restrictions of liberty measures by making them applicable only as an exception and where justified. Nevertheless, there are fewer safeguards in its daily operation because the prosecutor unilaterally makes the decision to imprison the accused without the intervention of the public defender. These decisions can be challenged before the *juez de garantías* and eventually through appeal. However, it appears that public defenders seldom oppose the judge, and therefore, in effect, the prosecutor holds powers similar to those of an investigative judge. The Cordoba system

is quite traditional in terms of preventative measures, given that the only measures used include citations, arrest, detention, being held incommunicado and pre-trial imprisonment.

In terms of its impact on the prison population, those held in pre-trial custody represent approximately half of those incarcerated in Cordoba.

d) Public Defense

The public defense in Cordoba is handled by criminal case advisors, attorneys employed by the judicial system to work on behalf of the accused who do not have their own private attorney. The cases are distributed among the advisors in accordance with the prosecutor's office under whose jurisdiction they fall. Therefore, each advisor receives cases from two prosecutor's offices, which are assigned to them by an annual drawing.

The advisors rely upon an Administrative Support Department made up of one secretary, two office heads, two office workers and four or five interns. The department does not have the resources to conduct independent investigations. Each advisor is involved in an average of 200 new cases per year, in addition to pending cases held over from the previous year. At any given moment, an advisor is responsible for an average of 25 accused prisoners. The Supreme Court of Justice of Cordoba directs the public defense system and has established a number of rules to guide its operations, but it has also delegated specific control regarding its compliance to the Public Prosecutor, such as requiring the defenders to make monthly supervised visits to the defendants. The prosecutor also controls a system of statistics and records of the activities of the public defenders. Since the control over the advisors is generally related to the proceedings and interviews with imprisoned defendants, cases that do not fall into this category tend to receive less attention.

The advisors become involved just prior to the first declaration of the accused before an official responsible for the investigation. This statement cannot be made without the presence of the public defender, whose absence would nullify it. This rule is strictly enforced. A rotating shift system ensures the presence of a public defender when there is specific evidence to be collected that if not collected may be lost (such as the declaration of a dying witness). This must be carried out before the accused makes a statement.

Until the accused's statement has been taken, the public defender has no access to the case brief, which is normally made available for review after the statement, unless it is secret, which would mean that access is restricted. Apparently it is not possible for the legal advisors to effectively participate in introducing evidence into the proceedings during the investigation phase, although they legally have the right to do so. Therefore, their actions related to testing the evidence are highly focused on the oral trial stage.

In the case of correctional courts, there is one legal advisor for every three courts, which number six in total. The two correctional attorneys are also in charge of the juvenile courts and a misdemeanor court, resulting in a very heavy workload.

e) The Victims

Another goal of the Cordoba reform was to improve the situation for victims. To that end, those involved in the system are obliged to provide the victims with information as well as the opportunity to become a plaintiff or claimant represented by a legal advisor. This does not appear to be very realistic, however, as the legal advisor who would be in charge of this matter is the same one who must defend the accused. Furthermore, they have very little time to attend to the needs of the victims. Of the approximately 200 cases that each legal advisor receives during the year, they intervene on behalf of the victim in no more than five.

Reparations made to the victim also seem to be a simpler choice in comparison with a normal civil suit when the proceedings are suspended. In such instances, one of the requisites is the establishment of some type of reparation.

In 1986, prior to the reform, a service was created specializing in victim assistance (Directorate of Assistance to Victims of Crime) under the Executive Branch. This center provides services in the areas of legal, medical and psychological support, and 90% of its cases involve domestic violence.

More recently, in 2000, the Office for Witness Protection was created. Its aim is to provide aid to those people whose lives would be at risk should they appear in court. This office helps witnesses by accompanying them to court, by facilitating their involvement, or by requesting judges to intervene on their behalf, for example by providing a police presence at their residence.

2. Quantitative Information

The following is a selection of information gathered during the observation stage of trials in the Argentine province of Cordoba. For further details, please consult the observation guidelines contained in the local reports.

The Cordoba study focused on oral trials. These are primarily carried out in the Correctional Courts, which deal with minor offenses mainly stemming from traffic accidents, and in the Criminal Courts, which handle more serious crimes. Full statistics will be provided as they become available.

The observation period ran from August 21 through September 21, 2001. During this time, 89 trials were scheduled for the Criminal Court and 28 for the Correctional Court. This schedule included abbreviated trials, as well as others, such as “short trials” (where the accused enters a guilty plea) and “closed door trials” (oral trials that are not open to the public). Of the 117 scheduled trials, 97 (82.9%) actually took place; while the remaining 20 (17.1%), did not.

The primary reasons for not hearing a scheduled trial were: the double-booking of trials, the failure of witnesses to appear, and requests by defense for an adjournment.

Of the 97 trials that took place, only 35 were actual oral trials that could be observed. The remaining 62 included 49 abbreviated trials, 8 short trials, and 5 closed-door trials, which could not be observed.

Of the 35 oral trials carried out, 27 in the criminal courts and 8 in the correctional courts, 31 oral trials were observed for this study, 26 in the criminal courts and 5 in the correctional courts.

There was a total of 45 accused between the two types of courts, 40 in the criminal and 5 in the correctional, and of these, 9 (20%) were found not guilty, while 36 (80%) were found guilty.

Of the 45 accused, the court agreed with the submissions of the prosecutor's office in 17 cases (38%), while it did not in 28 cases (62%).

Of the 28 cases in which judgment did not coincide with the prosecutor's position, the sentence was greater in 5 cases, and less for 14. In 9 cases the accused was acquitted of the crime.

Of a total of 31 of the trials observed in Cordoba, 28 (90.3%) did not have a complainant, while only 3 cases (9.7%) did, and always within the correctional courts.

Of a total of 47 accused, 42 in the criminal courts and 5 in the correctional courts, 25 (53.2%) were caught *en flagrante delicto*, while 22 (46.8%) were not.

Of the 31 trials observed in Cordoba, there were only 3 cases (9.7%) in which a civil action was presented. Of the 28 (90.3%) in which there was no civil action, 24 took place in the criminal courts and 4 in the correctional courts.

With respect to gender, of the observed 47 accused, 44 (93.6%) were men, and 3 (6.4%) were women.

With respect to age, of the 47 cases, 4 (8.5%), were 20 years of age or under; 30 (63.8%) were 21-31 years old; 11 (23.4%) were 35-50, and 2 (4.3%) were 51 or older.

With respect to the employment status of the accused, 11 (23.4%) did not have an occupation or were unemployed; 22 (46.8%) worked informally or occasionally, 11 (23.4%) were employed or occasionally employed; and 3 (6.4%) were educated professionals.

Of the 47 accused, 13 (27,7%), all from the criminal court, had prior convictions; 5 (10.6%) had had prior charges brought against them; and 29 (61.7%) had no prior history of arrest.

Regarding the type of defense used by the 47 accused, 16 (34%) used a public defender, while in the remaining 31 cases (66%) the accused was represented by private counsel.

Of the 47 accused, 10 (21.3%) had one or two pre-trial interviews with their attorney; while 37 (78.7%) had three or more interviews. All accused had at least one interview.

With respect to the time lapse between the crime committed and the beginning of the oral trial, the average was 500 days for criminal court cases; the minimum was 90 days

and the maximum was 2,160 days. The average increased to 1,530 for the correctional courts.

The lapse between the time an accusation was made and the oral trial was, on average, 240 days in the criminal courts and 960 days for the correctional courts.

Of the 42 accused in the criminal courts, 31 (73.8%), were held in pre-trial imprisonment, while 11 (26.2%) were not. In the correctional courts there was one instance of pre-trial imprisonment. Considering both types of courts, of the 47 accused, 32 (66%) were held in pre-trial imprisonment, while 16 (34%) were not.

The average duration of pre-trial imprisonment in these 31 cases was 330 days.

A total of 9 appeals were launched with respect to the trials observed in Cordoba, 7 (77.8%) by the defense, 1 (11.1%) by the plaintiff, and 1 (11.1%) by the prosecutor's office.

The local report indicates that it was impossible to count the large number of interventions made by the judges in each trial. In all of the cases the judges were the only ones engaged in verification. Thus the judges were almost exclusively responsible for questioning witnesses, experts, and defendants, always relying heavily upon the information provided by the investigation file.

Of the 26 criminal court cases, the prosecutor asked for an acquittal in 2 (7.7%); in 22 cases (84.6%), the prosecutor sustained the charges independently, while in another 2 cases (7.7%), the prosecutor and the plaintiff both sustained the same charges.

Of the 5 cases in the correctional court, the prosecutor asked for an acquittal in 3 (60%), while in the other 2 (40%), only the prosecutor sustained the charges.

Of the 45 accused, 18 (40%) testified at trial, while the remaining 27 (60%) did not. 13 of them (28.9%) made a closing argument, while 27, (60%) did not.

Of the 170 items of evidence presented by the prosecution, 136 (80%) were witnesses, 8 (4.7%) were expert witnesses, 10 (5.9%) were documents, 4 (2.4%) were objects, and 12 (7%) were photographs.

The defense presented 89 items of evidence: 73 (82%) were witnesses, 6 (6.7%) were expert witnesses, 4 (4.5%) were documents, and 6 (6.7%) were photographs. In the cases observed during the study, the defense did not file any exhibits as evidence.

Finally, of the 79 items of evidence presented by the plaintiff, 55 (69.6%) were witnesses, 7 (8.9%) were expert witnesses, 13 (16.4%) were documents, and 4 (5.1%) were photographs. In the cases observed, no documents were entered as evidence.

With respect to the length of the trials, the criminal court trials lasted an average of six hours over two days. Correctional court trials, however, averaged six hours over three days. The time between the end of the trial and the sentencing averaged 13 days in both types of court.

In 26 of the trials (83.9%), the hearings were carried out with the public present, while in the remaining 5 (16.1%), the public was not present. In 2 of those cases (6.5%), the public was prohibited from attending, while in the other 29 cases (93.5%) there were no restrictions.

Twenty-two of the trials were attended by family members of the accused, representing 71% of all of the trials. Fifteen of the trials (48.5%) were attended by people related to the system; and 3 cases (9.7%) were attended by the general public. Taking an average of all of the trials observed 4.8 people attended each trial.

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COSTA RICA

1. Descriptive information

a) *General aspects*

The Costa Rican reform process began with its 1973 Criminal Procedure Code. The code essentially established a two-stage process consisting of: investigations under the authority of an investigative judge from the inquisitory court, and the public oral trial, which, depending on the length of the sentence, fell under the authority of the Criminal Court or the Supreme Court of the adversarial court. Thus, the country has a long history in the basic practice of an adversarial system, particularly in the oral aspect of its trials.

In 1998 a new Criminal Procedure Code was put into effect along with the Law of Judicial Reorganization, which restructured the administration of the Judicial Branch and the Public Prosecutor's Office. At this time, control of the investigations was transferred to the Public Prosecutor's Office, eliminating the need for *i*nvestigative courts. Criminal courts were created to serve as a *juez de garantía* during the investigation and participate in preparations for the oral trial. The Superior Court became the Judicial Court, either a single-judge court which hears cases with sentences of less than 5 years, abbreviated proceedings, extradition cases and appeals of decisions made by the Criminal Court or a court of three judges that hears cases for crimes whose sentences exceed five years and for crimes committed by the press. Sentences appeals fall under the jurisdiction of the Criminal Cassation Court (*Tribunal de Casación Penal*[11] for those cases where sentences were handed down by single-judge courts, or Chamber III of the Supreme Court of Justice, for those cases where sentences were handed down by a multiple-judge court.

The Costa Rican trial observation study was conducted in the First Judicial Circuit Court of San Jose, which accounts for 16.2% of the country's criminal courts and 24.1% of its criminal judges.

b) *The Courts*

[11] The Tribunal de Casación Penal has the function of revising the lower court sentences when one party requests. This Courts reviews the use of the Law that the lower court judge has made in the case.

The 1998 reform affected all of the courts, both criminal and non-criminal, as it completely modified the judicial staff. As part of the reform, changes were made to administrative practices in order to improve the quality of public service provided by the Administration of Justice and to increase the effectiveness of human and material resources. The most notable of these modifications was the creation of the so-called 'mega-offices,' which consist of large concentrations of judges with jurisdiction over a specific subject in one office. The staff is shared, as all human and material resources are brought together to provide administrative support. However, as the local report notes, in practice, these modifications were not accompanied by either a cultural or material change, primarily as a result of misconceptions about the services.

As mentioned above, although the reform under the new Law on the Organization of the Judicial Branch aimed to improve court performance, the study found no positive results in this area. In fact, some of those who work within the system believe that it has deteriorated. Nevertheless, a major investment was made when the reform was first implemented and this investment has grown increasingly. This is reflected in, for example, the difference between expenditures for 1997 and 1998, which were approximately U$S 18,380,000 for the second year. It should be noted that these figures refer to the entire Judicial Branch, and not to the courts alone, and therefore include the Public Prosecutor's Office, the Public Defender's Office and the Judicial Police, among others.

Currently there are specialized administrative personnel in each office to facilitate the above jobs. The availability of an internal computer network, Judicial Intranet, presently used only by the San Jose offices, should be emphasized. It is hoped that additional networks will be included this year. Also, a computerized management system has been installed that is expected to allow files to become 100% electronic. There is also a state-run network that allows some offices to communicate with the public registries. One fact worth mentioning is that the law allows prosecutors and public defenders, both public and private, to file motions and petitions via fax, provided that the original document arrives within the following three days.

With respect to service of process, in most of the bureaus there is a Centralized Notifications Office as well as an administrative office that deals exclusively with the summons and prisoner transfers.

The distribution of cases among the courts is done internally within the courts. They are responsible for setting their own schedules, even though the report implies the need for better organization in order to increase efficiency. For example, the study points out that more than 50% of the hearings scheduled failed to be heard. The report states that the majority of the trials set to take place during the trial observation period did not take place according to the originally-scheduled date and time. It also mentioned that several of the presiding judges were not aware of the day and hour of the trials. This underscores the administrative problems existing within the offices. With respect to the delegation of functions, this occurred only in a few isolated cases.

Oral trials are documented via written minutes and voice recordings on cassettes; although, in reality, this is not entirely useful due to problems with the equipment. It should be noted that all of the rulings are readily accessible through the computerized system of Information on Judicial Decisions, which is unrestricted.

Furthermore, this same information can be requested directly from the court; although, in practice, it is only partially provided.

c) *The Public Prosecutor's Office*

This body falls under the jurisdiction of a Public Prosecutor and an Associate Public Prosecutor and is subdivided into local associate prosecutors offices within each Judicial Circuit. Certain prosecutor's offices, located in San Jose, specialize in certain areas and have jurisdiction throughout the entire country. There are also Summary Procedure Prosecutor Offices that handle cases that do not require extensive investigation, such as those dealing with offenders caught *en flagrante delicto*, regardless of their severity. Under the law, temporary prosecutor's offices can be established in certain cases or areas where they are needed to combat crime. The prosecutors are named by the Public Prosecutor, although according to the report, there are no clear criteria or conditions for doing so.

The report refers to various administrative problems that have led to an overall perception of inefficiency. First, there is an excessive accumulation of matters held over from the old system that have had to be assumed by the new system, effectively increasing the workload. Second, the Public Prosecutor's Office has been criticized for its lack of leadership in that it has not developed an appropriate plan to bring the old cases to a rapid conclusion.

One of the major problems mentioned is the fact that the preparatory investigation has become a series of rituals that are now even more formal than they were when the investigation was conducted by an investigative judge. An initial review of the cases shows there is no national policy for examining and evaluating accusations, forcing the assistant prosecutors to create localized policies. Although the law allows for different criteria and alternative solutions to be used depending upon the circumstances, the Public Prosecutor's Office offers no clear and concrete ideas for how they should be applied as it does not have its own statistical system. The proceedings are recorded in traditional files, and are accessible only to the parties involved.

The prosecutors are directed and supervised via two types of internal controls: hierarchical controls, and those of the Prosecutor's Office for Training and Supervision, which is dedicated solely to these tasks. In addition, internal disciplinary complaints are made to this office, which are then resolved by the Public Prosecutor, applying Disciplinary Rules. External control is exercised by the Judicial Inspection Tribunal, which processes and resolves disciplinary proceedings against judicial employees. External control is also exercised by the full Supreme Court in cases where severe procedural errors are involved. This court's role has been described as a threat to judicial independence.

Of the associations available to the prosecutors, the Prosecutor's Association is worth mentioning. Although its work is described in the report as very tenuous, the professional association's current proposal is to obtain independence from the Public Prosecutor's Office within the Judicial Branch, primarily for budgetary reasons.

The Public Prosecution interacts well with other entities within the Justice system. It has a particularly comfortable relationship with the Judicial Police, which, according to the report, was not subject to any changes as a result of the reform, and the Public Prosecutor's Office, primarily because both institutions belong to the Judicial Branch. The report does indicate, however, that in reality, it is normally the police who take the initiative and run the investigation, including interrogating the accused.

It is believed that direct ties to other state authorities are no greater than would be expected due to the fact that they are part of the Judicial Branch. In practice, the Executive Branch "provides resources to strengthen the investigations in which they are interested," which, according to the report, jeopardizes the principles of independence and equality.

d) *The Public Defense*

The Public Defense, which is also part of the Judicial Branch, has access to fewer budgetary and administrative resources than the Public Prosecutor's Office does. This entity is directed by a National Directorate, which has local offices throughout the country. Nevertheless, the defenders operate and handle their cases with professional independence.

Although this body has an investigative office, it does not have its own experts, and must therefore request aid from the Judicial Branch's Expert Services division through the Public Prosecutor's Office, or from the judge.

The accused may freely select a public defender, provided that it does not overburden that defender's caseload. The model used to control and supervise the work of the public defenders is similar to that used in the Public Prosecutor's Office, in terms of both internal and external control, although the Training and Supervision Unit has greater authority for making decisions related to promotions and transfers of public defenders. One issue that stands out is the defenders' lack of response to violations of the accused's right not to be interrogated by the police.

e) *The Victims*

We can conclude from the report that there are no mechanisms in place for victim protection. Although the Public Prosecutors in San Jose do have a Special Office for the Civil Defense of Victims that employs psychologists, the victim generally has no influence whatsoever on decisions made by the Public Prosecutor's Office. The victim may, however, choose to act privately. In practice, a civil action is presented in the criminal procedure because it is much faster than the civil process.

2. Quantitative information

The following is an extract of the information obtained during the observation of trials in the First Circuit Court in the city of San Jose, Costa Rica. For more details please consult the guidelines for observation contained in the local reports.

The observations were made during the period of September 1-30, 2001.

Of a total of 179 trials scheduled for this period, 54 were observed to completion. The information is incomplete for 17 trials that began in September but did not finish during the month, as well as for 9 other trials that did not take place but for which we have information on the accused.

The primary reason for a trial not taking place as scheduled stemmed from administrative problems in the judicial office.

Of a total of 54 trials with 70 accused, sentences were handed down in 30 cases (56%), while the accused were acquitted in the remaining 24 (44%).

In 50 (92,6%) of the trials observed, there was no plaintiff. A plaintiff was involved in only in four (7,4%).

In terms of gender, of the 70 accused observed, 56 (80%) were men, and 14 (20%) were women.

Of a total of 62 accused for whom we have information, 2 (3 %) were 20 years old or younger; 22 (35%) were 21-31 years of age; 29 (47%) were32-50; and 9 (15%) were 51 or older.

Of the 67 accused for whom we have information, 22 (33%) were unemployed; 27 (40%) were occasionally employed; 14 (21%) were gainfully employed; and only 4 (6%) were professionals or had a higher education.

Of the 70 accused, 25 (36%) had prior convictions; 20 (28%) had police records or had had charges brought against them, while 25 (36%) had no prior history.

Of the 70 accused, 47 (68%) relied upon a public defender, while 22 (32%) chose private counsel. In one case it could not be determined.

Of the 70 accused, 23 (33%) were held in pre-trial custody; while the remaining 47 (67%) were released.

In terms of the application of preventative measures other than pre-trial imprisonment, of the 47 who were not held in custody, 2 (4%) were subjected to an alternative preventative measure, while the remaining 45 (96%) were not.

Of a total of 55 trials, the accusation was sustained by a plaintiff alone in just 2 cases (4%). In 11 cases (20%) the prosecutor requested an acquittal; in 40 cases (72%) only the prosecutor sustained the accusation; and in 2 cases (4%) the prosecutor and the plaintiff sustained the same accusation.

With respect to trial testimony of the accused, 31 of the accused testified during the trial, and 32 did not. For the remainder of the cases, the information does not appear in the report.

Of a total of 54 items of evidence presented by the prosecution, 42 (78%) were witnesses, 3 (6%) were expert witnesses, 4 (7%) were documents; 2 (4%) were photographs; 2 (4%) were videos, and 1 (2%) was another type of evidence.

Of a total of 19 items of evidence presented by the defense, 12 (63%) were witnesses, 1 (5%) was an expert witness; and 6 (32%) were documents.

As for the plaintiff, the only evidence presented was an expert witness.

On 15 occasions in 54 trials, statements given by people who did not appear at trial were read in.

Thirty-five (65%) of a total of 54 trials were held with the public in attendance, while 19 (35%) took place without public attendance. Only 1 (2%) of the total 54 trials was restricted to the public, while the remaining 53 (98%) were not.

Family members were present in 31 trials, 11 were attended by people related to the system and 28 were attended by the general public.

PARAGUAY

1. Descriptive Information

a.) *General aspects*

The reform in Paraguay originated from different aspects of the 1992 Constitution, which formed the basis for the country's transition to democracy. These resolutions also very clearly outline the mandate to create a criminal procedure system with a markedly adversarial nature. In 1999 this mandate was cemented with the formulation of a new criminal procedure system, which became effective in March 2002. Under the new Criminal Code, which superceded the old inquisitory system, the preparation of criminal cases is the responsibility of the Public Prosecutor's Office, and judgments are made by means of a public oral trial. The reform also aimed to introduce a major set of alternative procedures for resolving criminal cases more effectively.

The Paraguay study examined the current system in the country's capital city of Asuncion, which has a population of 700,000.

The system in Asuncion[12] is composed of the following parties: 32 judges, including 6 *jueces de garantía*, 1 *juez de ejecución*[13], 13 sentencing judges (7 of whom direct settlement courts), and 12 members of the Court of Appeals (6 of whom are members of two settlement courts. There are 30 regular prosecutors, as well as one in charge of the Judiciary Cabinet, and 16 special prosecutors, for a total of 47. The study counted 29 public defenders.

In 2001, 33,305 criminal cases entered the system nation wide, with 11,586 of these within the jurisdiction of Asuncion.

There were 1,360 cases closed in Asuncion in 2001 as follows: 736 dismissals; 147 for

[12] Number of parties observed with criminal jurisdiction in Asuncion.
[13] The Juez de Ejecución is a judge whose function is to control the way in which the punishment is being carried out.

dismissal of prosecution; 50 abbreviated proceedings; 34 provisional stays; 8 were settled and placed into diversion programs; 115 were placed in a diversion program; 111 were settled; 90 were definitive stays; 29 were closed for abolishment of criminal action, and 40 through oral trials.

b) The Courts

In addition to its procedural aspects, the reform process in Paraguay also included a significant change in the fundamental structure of the courts, manifested in the creation of *garantias* courts and trial courts. In both cases, these courts were endowed with a new administrative system, in which judges were freed from administrative tasks by assigning specialized support staff to those duties. The Supreme Court has apparently concerned itself with the management of the courts and has set up an office to coordinate the changes needed to bring the new system into force. Nevertheless, budgetary problems have made it unlikely that the reform will be adequately implemented throughout the judicial system. In practice, since the Judiciary Branch budgets have not increased, the new system has been forced to operate with the same number of judges and support staff as before.

In fact, the number of judges working in the new system is relatively small for a city the size of Asuncion. There are 6 *jueces de garantía*, 1 executive and 13 sentencing judges. Seven of the sentencing judges also work on completing cases carried over from the old system. Support infrastructure is also limited, especially with respect to notifications, where staff size has not changed despite the increased workload required by an oral system. Nonetheless, enthusiasm and positive efforts can be seen in the creation of a centralized notification office located in Asuncion that makes use of available staff.

In general, the administrative staff is responsible for such tasks as reception, distributing case loads, and attending to the public. The judges manage their own schedules, and there is no specific system for organizing hearings.

The frequent failure of oral hearings to take place is a great problem. This is apparently the result of the limitations faced in implementing the reform, as well as of problems encountered in coordinating with other elements of the system (for example, the attendance of lawyers and transfer of the defendants).

Many of the decisions made in the initial stages of procedures are not contested, and these decisions often include delegating judicial functions, including some important decisions, to subordinate staff. In addition, the "old system" tendency to lend a judicial character to many administrative processes has meant that these two functions continue to overlap.

Hearings in the early stages of criminal proceedings are oral only, particularly those pertaining to imposing preventative measures and rulings for diversion programs. In spite of this, the resolutions resulting from these hearings are not made public, but are understood to be covered by the confidentiality of the investigation. The hearings themselves are not public either and are usually attended only by the judge, the defendants, and their counsel. The prosecutor is normally not present, although the judge generally imposes the preventative measure that has been previously recommended by the prosecutor. Neither the need for a preventative measure, nor the

proportionality of the measure, is discussed. Thus, the hearing does not have an adversarial character.

In effect, the only hearing that is public, apart from the oral trial, is the preliminary hearing for the oral trial. Hearings that are held for appeals to the higher courts, and those for the execution of a sentence are also oral, in theory. However, in practice, an oral hearing has been held only once for an appeal. In all other cases, these actions have been discussed and resolved in a non-public manner.

c) The Public Prosecutor's Office

The Public Prosecutor's Office seems to be in the process of adjusting to the new procedures, in which its responsibilities have increased significantly. However, this adjustment has been slowed by some difficulties. Although a significant increase in resources has been planned to allow the Office to adjust to the new system, in practice, the allocation of funds has been limited in the approved budget, with only slightly more than half of these funds becoming available each year. The significance of this is reflected in the fact that, for the year 2001, the available budget was actually lower than that of previous year (US$15,661,458 in 2000 compared to US$9,707,589 in 2001).

In terms of organizing its work, the structure of the Public Prosecutor's Office is quite flexible. There are some general units that handle all types of crimes, as well as others that are more specialized. In addition, there is an entry system that assigns new cases to the different prosecutors. In practice, this system seems to be simply automatic, with no provision for a more rational distribution of cases among prosecutors.

A prosecutor analyzes each case, making pertinent decisions in collaboration with his or her assistants. The assistants thus informally acquire substantial importance in decision-making. At present, the Public Prosecutor's Office does not have a computerized information system for case management and control, although one is being developed. Prosecutors make frequent use of alternative case resolution methods, although this is done on the basis of individual criteria, as the Public Prosecutor's Office has no general guidelines for this purpose.

It was observed during the study that the Public Prosecutor's Office has not developed ongoing mechanisms for supervision. On the contrary, in general, each prosecutor acts autonomously with regard to his cases. The mechanisms that do exist are more reactive, for example when a judge opposes a prosecutor's decision and the law provides for its referral to a superior. There is no system in the Public Prosecutor's Office for case follow-up; each prosecutor maintains his own record. This deficiency is being addressed through the development of a computerized system.

In the Public Prosecutor's Office, there are no established systems for the evaluation and promotion of prosecutors, meaning that, in practice there is really no performance-based career path that allows prosecutors to aspire to promotion.

The Public Prosecutor's Office carries out investigative activities with the aid of the police. However, the relationship between the Public Prosecutor's Office and the police has been problematic. There has been mutual distrust, particularly during the transition

to the new system. The investigators in the Judicial Investigation Center of the Public Prosecutor's Office support the prosecutors in some of their cases and for this reason are sometimes seen by the police as their competitors. There continues to be some confusion as to the definition of functions between these two organisms, a fact that has escalated the degree of mistrust on both sides. Nevertheless, the prosecutors interviewed indicated that, in general, the police fulfill their legal responsibilities by providing the information needed by the prosecutors to fulfill theirs.

Problems related to the exchange of information between prosecutors and the police appear to be due to the fact that investigative tasks have not been well defined. Prosecutors may formulate general requirements for an investigation without identifying the specific tasks to be carried out. Confusion is generated because it is not clear who is in charge of the investigation from a technical point of view; that is, who is responsible for defining the strategy and the concrete steps to follow in the investigation.

Another cause of discord has been the suppression of police authority in autonomous investigations. At times, the police have persisted in carrying out investigative duties that are not legally their responsibility. On the other hand, the police have occasionally hidden behind their lack of autonomy and chosen not to act in situations that are clearly legally necessary and appropriate.

Those interviewed recognize that there has been a significant reduction in abuse by police officers. The law does not allow police to interrogate detainees. Nevertheless, this is apparently still practiced to obtain "voluntary" statements. These statements have also been introduced in oral trials through police testimony. It is important to note that while accusations of arbitrariness on behalf of the police force may result in the nullification of proceeding, they do not result in charges against the police, and therefore continue to be employed.

In general, control of investigations remains in the hands of the police, which has the operative capacity to carry them out. In addition, the most successfully prosecuted crimes are those in which the defendants are caught by the police *en flagrante delicto*, especially in theft, larceny and drug cases.

An additional problem encountered by the Public Prosecutor's Office is the increasing bureaucracy involved in its requests for assistance other state agencies, such as the Coroner's Office and public entities that keep useful records. The lack of computerization in some of these services also makes timely acquisition of information difficult.

The Paraguayan prosecutors have some special powers that allow them to resolve criminal cases in non-traditional ways, avoiding the need for a complete judicial procedure. These alternatives are apparently being used relatively frequently. Of the cases presented to the courts, 39.5% had some alternative form of resolution. Of these, 26% were resolved by settlement with the victim, 29% were placed into a diversion program, 12% had shortened proceedings, and 33% were resolved by prosecutorial discretion.

As the figures above reflect, alternative means for the resolution of cases is an important resource for the public prosecutors. Nevertheless, the number of cases presented to the

courts is a relatively small number of the total number of cases that exist. The majority of cases, 55%, result in dismissals.

It is important to note that the reform in Paraguay has coincided with periods of great political instability, in which criminal charges have often been brought against politicians and different state authorities. For this reason, the Public Prosecutor's Office has received constant criticism from these sectors. It has also experienced budgetary problems, perhaps a further result of the tension between it and other State agencies.

d) The Public Defense

In Paraguay, public defense comes under the jurisdiction of the Supreme Court, and is headed by the General Office of Defenders. This body has two associated offices, one of which directs the criminal area. At the operative level, it is the public defenders who undertake the concrete tasks of providing legal counsel. At the national level, there are 96 defenders who handle criminal matters, 29 of whom work in Asuncion, where the study was carried out. The defenders work in operative units as pairs in order to substitute for each other when they have schedule conflicts.

The work of the defenders is assigned by means of 48-hour shifts per operative unit. Within these shifts, each defender works 12 hours as the principal, and 12 as the secondary defender.

Six hours after a prosecutor informs a judge of an investigation, an accused may request the intervention of a public defender. This time limit has been the object of some conflict, as there is disagreement in defining the exact moment at which a prosecutor has the obligation to inform the judge. In practice, the right to defense counsel can only be fully exercised by those who have a private attorney. For those without the benefit of private legal counsel, a public defender is only designated when required by an impending procedure in which his presence is required, such as when the defendant makes a statement to a prosecutor or judge, during examinations, production of evidence in advance, or urgent investigative actions.

The Public Defender's Office also assumes the defense of individuals whose attorneys have resigned from or abandoned their cases. In general, the office lacks the technical and financial support to carry out independent investigations.

The Office does not have a management body, and there is no system for promotions or incentives linked to job performance. In practice, the defenders are evaluated based on their case reports. It is theoretically possible for defenders to be disciplined by the Defenders Office or for a client to request a change of public defender, but these situations have never arisen.

To fulfill their responsibilities, the public defenders have access to the information from the investigations conducted by the prosecutors. The law explicitly states that this information must be made known to the defendants at the time of arrest, in their declaration, and at the time of transferring the conclusive requirement of the preparatory stage.

Many of those interviewed in Paraguay commented that the assignment of professionals to the different agencies involved in the new system continues to be subject to strong political influences. In fact, it is a source of conflict that positions are filled by the different political parties through a quota system. Ostensibly the hiring system functions through public competitions, in which the Judiciary Council formulates a short list of candidates for final selection by the Supreme Court. However, one of the main problems is that the competitions do not set specific suitability requirements or other criteria for candidates. Rather, selection is based on reviewing the candidate's résumés, a process that is subject to political influence, especially considering the lack of objective criteria.

Officials are dismissed through a parliamentary impeachment process, in the case of members of the Supreme Court and the Public Prosecutor, and by a special jury of members of parliament and of the judicial system in the case of other judges and prosecutors.

According to those interviewed, this system is also used to exercise political influence. There is an ongoing discussion as to whether public defenders should be subject to removal in the same manner. Many accusations have been made against these professionals, and very few have been formally investigated., but the threat of being dismissed still functions as a means of exerting political pressure on the defenders.

e) The Victims

One of the objectives of judicial reform in Paraguay has been to incorporate the interests of the victims. To accomplish this, the Victims' Assistance Board was created within the Public Prosecutor's Office. The purpose of the Board is to aid those affected by crime by increasing their participation in the criminal procedures. In practice, this service has focused primarily on domestic violence and sex crimes.

There is no special system for victim protection; measures are limited to those that a judge can order, such as police protection. In addition, victims do not have access to legal counsel other than the public defenders.

One important change that should benefit victims is the explicit inclusion of specific measures for reparation in the resolution of criminal procedures. We have already indicated that there is little possibility of victims taking civil action due to the lack of access to legal assistance. On the other hand, alternative means of settlement are being used, although these must be initiated by the judge. Prosecutorial discretion and diversion programs are also being utilized, both of which require an agreement of reparatory measures or the demonstrated will of the defendants to make amends for damage caused.

f) The Preventative Measures

The preventative measures that can be ordered under the new system are substantially more varied than those available under the old system, and include a new set of alternatives to preventative imprisonment. These measures consist of fewer intensive

imprisonments, and range from house arrest to restraining orders with respect to specific places or individuals. However, there is no system in place to control or evaluate these measures, which makes them difficult to apply.

Despite the problems mentioned above, the figures indicate apparent success of the reform in terms of having contributed to reducing the percentage of the prison population being held in pre-trial custody. Before the reform, the percentage of prison population held in Paraguay for preventative reasons reached 96%. At present, close to 56% of the prison population has already been prosecuted.

2. Quantitative Information

The following is a selection of information gathered while observing trials in Asuncion. For more detail, consult the observation guidelines included in the local reports.

The observations took place September 1-30, 2001.

Of a total of 17 trials scheduled for this period, 13 (76.5%) were effectively concluded and 4 (23.5%) were not.

Of the 13 trials carried out, 11 (85%) were observed for this study.

The primary reason for a trial not taking place was out-of-court settlement..

Of the 15 defendants in the trials observed, 100% were sentenced. In four cases (26.6%), the sentence handed down agreed with the one requested by the prosecution, while in 11 cases (73.4%) the sentence did not coincide.

In the 11 cases in which the sentence did not coincide, the sentence was always less than requested.

Of the 11 trials observed, 6 (55%) involved no plaintiff, while in the remaining 5 cases (45%) a plaintiff was present.

Of a total of 15 accused, 6 (40%) were arrested *en flagrante delicto*, while the remaining 60% were not.

In terms of gender, of the 15 defendants in the trials observed, 14 (93.3 %) were men, and only one (6.7%) was a woman.

With respect to age, one of the accused (6.7%) was under 20 years of age. Nine (60%) were 21-31 years of age, 4 (26.6%) were 32-50 years old, and only 1 (6.7%) was over 51.

Three (23%) of the accused had a prior conviction, and 7 (54%) had previously been accused or had police records. Three (23%) had no police record.

In terms of legal counsel, 14 of the defendants relied upon the public defense, while 12 chose private counsel (these figures can be explained by the fact that a defendant can

have more than one legal counsel).

Information regarding the number of pre-trial interviews defendants had with their attorneys was only available for 13 cases. Of these, 7 (54%) had 10 or fewer interviews, and 4 (31%) had between 11 and 20, and 2 (15%) had more than 20 interviews with their respective lawyers.

For the 11 trials observed, the minimum time lapse between the punishable offense and the start of the trial was 147 days, while the maximum time lapse was 531 days. The average was 368 days.

From the time the charges were made to the beginning of the oral trial, the minimum time lapse was 56 days, while the maximum was 337 days. The average time was 190 days.

Twelve of the 15 (80%) were subject to pre-trial imprisonment, while 20% remained free. The average time in pre-trial custody was 338 days.

Nine of the oral trial sentences were appealed, all by the defense.

Some of the defendants in Paraguay spoke a language other than Spanish. Six of the twelve defendants spoke in another language, two of whom used interpreters during the trial.

In the 11 trials observed, the judges asked an average of 29.8 questions of witnesses and experts, while an average of 3.3 questions were directed toward the defendants.

In 1 of the 11 cases (9%), only the plaintiff sustained the charge. In this case, the prosecutor requested acquittal. In 6 trials (55%), only the prosecutor sustained the charge. In 2 trials (18%), both the prosecutor and the plaintiff sustained the charge, while in the remaining two cases (18%) the prosecutor and plaintiff supported different charges.

Twelve (80%) of the 15 defendants testified at their trials, while the remaining 20% did not.

In 11 trials (73.4%), the defendants made use of their right to a closing statement, while in the 4 remaining cases (26.6%) they did not.

Of the 152 items of evidence presented by the prosecutors during the trials, 52 (34.2%) were witnesses, 9 (5.9%) were expert witnesses and 82 (54%) were documents. Three pieces of evidence (2%) were objects, 3 (2%) were photographs, 2 (1.3%) were videos and 1 (0.6%) was in another form.

Of the total of 107 items of evidence presented by the defense, 33 (30.9%) were witnesses, 8 (7.5%) were expert witnesses and 64 (59.8%) were documents. The remaining evidence consisted of one photograph (0.9%) and one video (0.9%).

Of the total of 107 items of evidence presented by the plaintiffs, 15 (31%) were witnesses, 32 (65%) were documents, and the remaining two were a video and a

photograph (representing 2% each).

Of the 11 trials observed, there were no cases of reading of documents, from anyone present or not present at the trial.

The average duration of a trial was 9 hours, in hearings held over two days.

Of the 11 trials, 10 (91%) were attended by the public, while only one (9%) was not. There was an average of 11.9 observers per trial.

IV- COMPARATIVE ANALYSIS

In this final part of the report, we analyze the information generated in the different national reports in order to present a comparative overview of the strengths and weaknesses of the different reform processes included in the study.

It is necessary to note that the statements made in this section necessarily generalize and simplify the facts contained in the national reports in an attempt to extract relatively general conclusions that can explain the trends or common factors pertaining to all of the reform processes. In consequence, the reader must bear in mind that in this section we are speaking of very different reform processes, undertaken in countries with different levels of development and with diverse political conditions, and therefore, the general trends that we attempt to identify should be understood within the varied context of each location. We therefore recommend that in each case the readers refer to the national reports when they wish to fully comprehend the ways in which each of the general considerations made here is expressed in a specific country.

In this section we will analyze a series of factors which, in light of the information obtained from the national reports, seems to have a significant impact on the results of the reform processes. The levels of analysis used to consider each of those factors is very diverse. In some cases, rather solid evidence demonstrates the significance and effects of some of those factors on the different processes; in other cases, consideration is given to hypotheses that are interesting to the degree that they will stimulate further research that will later validate or disprove them. In any event, the precise purpose of this final section of the report is to suggest a series of questions that arise from a relatively informed observation of four substantial reform processes, in order to open what we believe constitutes the debate that is necessary to begin the process of exploring the complexities of the reform processes based on our own experiences.

a) Institutional Strengths

First of all, it is important to note that three of the jurisdictions analyzed – Cordoba, Costa Rica, and Chile – are examples of the minority group of Latin American countries with relatively strong and consistent institutional structures. For reasons beyond the scope of this study, the different instruments of the judiciary system in these nations generally have a significant history of independence and professionalism, notwithstanding isolated periods of great crisis and criticism. These are also places where the state apparatus generally functions with efficacy; they are communities with

the highest levels of development in the region. In each of these three locations, there is a debate that surrounds judicial appointments, the means of controlling their actions, and the mechanisms for their removal. In fact, the creation of the provincial Judiciary Council in Cordoba is one of the most important developments of judicial reform there. Nevertheless, the debates mentioned above illustrate attempts to improve the operational standards of the judicial system but do not consider the critical issues of political influence, corruption, and the manipulation of judicial bodies by other political and economic institutions. Although the corresponding country reports contain information regarding the mechanisms for appointing and removing judges, prosecutors, and public defenders, in general, we have not included these in our summary reports. This information has been excluded here precisely because the parties involved do not seem to realize that in the debate on the respective judicial systems, these matters are as important in their own countries as they are in the other countries of the region.

In Paraguay, on the other hand, it appears that the most direct form of political influence on the Judicial Branch, such as the appointment of political allies or the threat of dismissal for rulings against political authorities, has not yet been overcome. As a consequence, debate surrounding the judicial system in this country still seems to center on very basic issues, such as whether or not one can depend on the autonomy of judges' decisions.

This issue is quite relevant in terms of the different reform implementation experiences in the four cases analyzed. If the autonomy of judicial decisions is not firmly established, can a reform process count on enough political support to consolidate changes over time? In Paraguay, where the lack of ongoing financing seems to be one of the most acute problems of the reform process, funding is used as a way of wielding political influence, at least in the Public Prosecutor's Office.

In addition, the consolidation of complex judicial systems, such as those that have been encouraged during the reform process, is made more difficult within the context of weak institutional environments. For example, returning to the case of Paraguay, one of the problems presented in this country's report was the difficulty imposed upon the judiciary procedures by the low level of computerized information systems in other state agencies, as well as their inefficient operation in general.

However, even in these situations where the conditions for reform are quite unfavorable, the process, at least initially, has been able to sustain itself on the high levels of enthusiasm and support of some sectors of the legal community, including some within the judicial system itself. In a number of countries studied, support has arisen from a wide group of highly motivated young professionals that have become one of the main driving forces of the reform. Enthusiasm from this sector also increases the possibility of resolving the difficulties that have threatened implementation of the reform.

We believe that two questions are appropriate at this point: to what extent can the model of judicial reform free itself from the type of government in which it operates? And, should the countries with a weaker institutional structure aim to install complex judicial systems such as those that are encouraged in criminal matters, or are there more appropriate alternatives for these types of situations? In our opinion, these questions cannot be answered at present; rather, we must follow the developments in Paraguay closely, with the aim of assessing the consistency of its reform over time. To date, it

would appear that this country faces many serious problems arising from the weakness of the institutional structure surrounding the judicial system. Paradoxically, it also manifests a significant degree of dynamism that is clearly expressed in the mobilization of different sectors of the legal community that support the reform process.

b) Changes in the fundamental practices and the consolidation of the values of the theoretical model.

We feel that before entering into specific aspects that could be viewed as critical of the respective implementation processes and generate the impression of vastly precarious reform processes in the countries considered in this study, we must say that overall, the reforms that have taken place in each country have had a significant impact on their judicial systems. That is to say that beyond the weaknesses of the implementation processes, in every case, the processes have produced significant changes that have substantially altered the physiognomy of their judicial systems. To illustrate, we can say that we are not dealing with the type of reforms referred to when describing what has traditionally been said of many of the region's institutional reforms: that the changes were limited to the law, which failed to produce an impact on the reality or any real concern in the matter[14]. The current setting is different; the implementation processes today may be the object of criticism in terms of quality and consistency, but not with respect to their existence. In every case, there have been relatively intense implementation processes, and our intention here is to discuss their strengths, weaknesses, and effects.

It also seems important to mention, with respect to the impact of the reforms, the fact that in every country observed, particularly in the respective legal communities, the reform process has strongly focused on instilling a new set of expectations with respect to the values that a judicial system should strive to achieve. In every case, the reforms have been accompanied by processes of debate and widespread discussion in which ideas such as the oral and public nature of the reform processes, the need to respect the standards of individual rights in the criminal processes, and the need to protect the victims of crime have been broadly disseminated and are widely accepted. These processes are not as novel or innovative in Costa Rica and Cordoba, at least with respect to some of these ideas, as both had had a previously long tradition. The processes in Chile and Paraguay, however, have been very rapid. Evidence of this is the fact that the legal communities, which have had very little critical development regarding the operations of the judicial systems, have incorporated these new expectations in a very short period.

c) Funding the reform process

It has been very difficult to obtain information regarding the resources involved in the different reform processes. However, with some significant differences, it can be said that in all cases great resources have been employed. Evidence of this can be found in the high ratio of professionals to population attended in all countries:

[14] An example that illustrates the accuracy of this type of perspective is provided by the numerous attempts made in the past to introduce oral proceedings and short trials in various Latin American countries in areas such as family, labor, or small civil cases, that lacked implementation programs and which in practice, were completely absorbed by the logic of the written proceedings.

In the regions studied in Chile, there were 60 prosecutors, 62 judges, and 29 public defenders to attend to a total population of 1,465,292 inhabitants (according to preliminary data from the 2002 Census). In Cordoba, whose capital city has a population of 1,282,569 inhabitants (according to provisional data from the 2001 Census), there are 50 prosecutors, 56 judges, and 17 public defenders. Costa Rica's 110 prosecutors, 67 judges and 78 public defenders serve a population of 790,165 (corresponding to the First Circuit Court of San Jose). Finally, in Paraguay, there are 47 prosecutors, 32 judges and 29 public defenders, for a population of 700,000 (Central Asuncion).

Individual country reports provide information regarding the budgets involved in the reform processes. In Chile, for example, the Courts' budget for the year 2000 was US$12,405,000, while for 2001 it was US$36,132,000. The budget for the Public Prosecutor's Office was US$4,774,000 in 2000 and increased to US$18,104,000 in 2001. Finally, the Public Defenders Office had a budget of US$6,590,000 in 2001. In addition, the approximate amount of state resources invested in the five regions in which the new system is in operation had reached the sum of US$84,000,000 at the time this report was prepared.

According to available data, the Public Prosecutor's Office in Costa Rica was allocated US$5,746,230 in 2002, and the Public Defenders Office received US$254,207.

In Paraguay's case, the approved budget for 2000 was US$20,289,791, of which US$15,661,458 was effectively implemented, while in 2001, of the US$17,466,479 approved in the budget, US$9,707,589 was implemented.

d) Trial models

One of the objectives of the reform processes in all of the countries observed/studied was to introduce oral adversarial trials. In systems such as Costa Rica and Cordoba, where oral trials already existed, the process has focused on accentuating their adversarial nature. In Chile and Paraguay, the aim was to introduce oral trials with a much more adversarial character than had been used previously anywhere in Latin America. In general, when we refer to adversarial trials, we are implying a model in which those who make and direct the accusations are distinct from those who make rulings, with the latter relying solely on the information presented by the two sides during the oral trial, thus playing a passive, merely decision-making role.

The results of this part of the reform appear to be quite dissimilar in the different cases studied. In Chile, oral trials have developed closely in line with the adversarial notion, in which judges intervene very little, and the main function of the collection of the evidence is left to the two opposing sides. Furthermore, trials in Chile utilize few written declarations and concentrate on producing evidence through interrogating witnesses who appear personally at the hearings. At the other end of the spectrum, in Cordoba, despite the fact that the reform established requirements aimed at strengthening the adversarial nature of trials, the trial itself continues to be very much directed by the judges, who ask the majority of the questions. The accusatory role of the public prosecutor is clearly reduced, as shown by the fact that in a significant percentage of cases the trial is carried out despite the prosecutor's request for dismissal.

At the same time, the reading of many documents from the formal case file of the investigation indicates that this written record continues to play a central role in trials.

e) Three-judge oral trials and their productivity

A common thread among the four systems analyzed is that the three-judge court is the form of oral trial most often used. This fact in itself is noteworthy, given that in countries with longer legal traditions, this is not the most common form for normal trials. At any rate, this model is the most time-consuming for judges. In countries with an Anglo-Saxon legal tradition, the most typical system consists of a jury of citizens and only one paid judge, while in the majority of European countries the *escabinos*[15] system is used, in which a number of different combinations of judges and citizens are employed. In all of these systems, there are normally fewer than three judges. However, what interests the present study is not the institutional arrangement in itself, but the way it functions. It is worth noting that although in all cases the three-member courts represent most of the judicial apparatus, the workload of the judges seems to be considerably low, at least according to the information obtained through trial observations in this study. It must be repeated, however, that these observations are not necessarily representative of the definitive results of reform processes, which are still quite new.

What does appear clear is that attention must be focused on the chosen formula which, in addition to being relatively expensive, is not very dynamic and increases costs even further. It seems that where judicial budgets have been increased for the purposes of the reform process, a large part of these funds have been assigned to creating new judgeships and their attendant support and administrative staff for the oral courts.

f) Weakness of the court administrative system

In some countries, such as Chile and Costa Rica, one of the explicit objectives of the reform is to modernize the legal offices. In other cases, such as Cordoba, this goal has been much less important in the overall process. Nonetheless, all of the countries are deficient in this area, in that none of the systems studied have successfully created a court management system that meets the needs of the new procedural model. In light of this fact, the first conclusion that can be formulated is that not even the countries that have made the most explicit efforts to develop efficient administrative systems have been successful in achieving them. This represents an important unfinished chapter in the history of the reform process, with no apparent success to date.

Despite this lack of success, we can analyze the manner in which different countries have approached the issue of court administration in terms of the degree of modernization attempted and the results achieved. Simplifying the issue for the purpose of our analysis, we could place the province of Cordoba at one end of the spectrum. In this city, the reform did not contemplate a change in the traditional model of court administration. In consequence, the old system has been maintained in which each court has its own clerical support staff – two in the criminal courts, who process cases according to the traditional case file system. In this instance, the degree of inadequacy of the administrative system endangers the most basic elements of the system, such as

[15] Escabinos is a system commonly used in Europe. It consists in conforming a multiple-judge court with professional and non professional (citizen) judges.

the public, oral nature of the trials. There are no schedules for hearings, functions are delegated, and the attorneys obtain information through informal interactions with court staff.

The situation is somewhat different in Paraguay. Although concern has been expressed with regard to improving court administration, not enough advances have been made due to a number of institutional problems that have affected the reform process as a whole. Again, the problems are significant in this country, especially in the *juzgados de garantía*, where in many cases hearings are replaced by the more or less traditional system of delegating tasks.

In Costa Rica, there appears to be a concerted effort to streamline the court administration system by means of the so-called "mega offices," in which a large number of judges with similar functions share the same administrative system. The creation of these mega-systems is one of the most essential innovations of the new system in this country, and they have been implemented across the judicial system. However, efforts have concentrated on grouping judges together rather than modifying the manner in which the administrative tasks are envisioned. In the mega-offices, cases are still processed in a predominantly traditional manner, with different procedural steps being carried out by means of a case file, while cases advance through formal resolutions. Finally, the results of these administrative changes have been highly questioned because the unified system for processing cases appears to be no more efficient than the traditional model.

In Chile, we can say that the change in the administrative system of the courts has been even more radical. Not only have offices been unified and professional administrators introduced, but the basic conception of court administration has been changed from that of processing case files to that of organizing the very hearings that constitute the judicial process itself. The main difficulty has been for the professional administrators to gain acceptance by the judges and other members of the judicial hierarchy. Indeed, these new officials seem to be experiencing a sort of rejection and are having to fight for their survival. As a result, they have not been able to install more modern administrative methods to any significant extent, and there have been disturbing signs that traditional practices are being reestablished.

In all of the countries studied, the traditional system shows signs of maintaining its stronghold. When we refer to the traditional model, we are speaking of a system in which the administration of the main body of work – the judicial process itself – is still conceived of as a matter of jurisdiction, in other words, controlled by a judge. Thus, rulings that are made and the apparatus that facilitates them, are based on the judge's delegation of tasks to subordinates. This system is based primarily on personal relationships and is therefore difficult to standardize. This model can apparently function in harmony with a centralized administration when the latter is not involved in the primary tasks of procedural activity, but rather is concerned with other tasks such as attending to the public, the administration, and notifications. However, centralized management of the courts does run into difficulties when the changes affect the judicial procedures themselves.

g) Weakness of the system to organize hearings

Of the many administrative weaknesses manifested in the different countries studied, the most prevalent and visible is found in the organization of oral hearings. In all cases, those interviewed identified the most substantial problem as being the continual failure of hearings, along with the corresponding delays, frustration, and loss of time for the parties that do appear.

This problem takes different forms. Some jurisdictions have attempted to systematically address the problem of organizing hearings. In Chile, for example, we find the typical problems found in the rest of the court administrations; however, there is the expectation that the process of institutional learning now underway will result in progressive improvements.

In other cases, a system for organizing hearings has only been developed to a minor extent, as there are no employees specifically assigned to this task. The traditional system is therefore maintained, with notifications and citations under the control of a judge's subordinate who has been assigned to process the case. This is the situation in Cordoba, for example. In both cases, however, albeit to a greater degree in the second, the change does not seem to have been sufficiently clear to overcome the traditional system of notifications. It has been difficult for staff members to understand that the changes must be oriented toward ensuring that the necessary documents and relevant parties are assembled at the right moment to successfully hold the hearing, rather than simply taking the form of a new set of procedures to certify the necessary communication of certain facts to the different parties. This requires a substantial change in the orientation of the work of court employees, moving from a fundamentally bureaucratic notion centered on the different steps of the procedures, to a much more proactive position that emphasizes results and the appearance of those whose presence is required at the hearings.

h) Problems in making trials public

As we have previously mentioned, the study has shown that there is a high degree of acceptance of the basic values of the reform process, at least in terms of providing a new framework of expectations for the legal community and the community at large to evaluate the criminal justice system. Nevertheless, in some cases the weakness of the implementation process has interfered with putting these values into practice.

The notion of making trials public is one area in which the contradiction between theory and practice can most clearly be seen. Undoubtedly, the idea of public hearings as a paradigmatic element of the reformed judicial systems is firmly installed in each of the countries studied; however, the implementation of the reform has created operational problems that are worth examining.

The first striking issue is the extent to which the new methodology is being employed. In all cases, the public discourse indicates that the strength of the new system fundamentally resides in public oral hearings, given that this context provides the adversarial interaction between parties and above all the external control that stems from the open consideration of judicial actions. While public trials are being implemented, in practice, rules regarding the confidentiality of investigations are often invoked. In effect, the parties involved in the process are reducing the adversarial, public character of judicial proceedings to a minimum. The result has been a tendency

to reduce the public element of oral trials. Since these proceedings represent a relatively small proportion of judicial proceedings, in effect virtually all important court decisions are excluded from this form of discussion and decision-making. For example, some decisions, such as those regarding precautionary measures, express the most important exercise of judiciary power and are the foundation of the everyday work of the courts.

Only in Chile have public hearings been successfully implemented as a general way of making judicial rulings. This has been accomplished principally through a training process that was undertaken in spite of resistance from many of the operators of the judicial system itself. In Paraguay, some important decisions in the initial stages of proceedings are taken in adversarial hearings. These hearings, however, are not public, which makes it difficult to predict whether or not these adversarial formalities will deteriorate over time. Other decisions of the court are adopted directly by way of written procedures, reproducing the old system. In Cordoba, the extreme form of this tendency can be seen in that there are no real hearings in the initial stages of criminal procedures, and thus decisions are based on the traditional, written statements.

However, even within this relatively reduced arena left to public oral trials, we find major obstacles that interfere with the universal practice of the highly acclaimed values of the reform. In some places, such as Chile and Cordoba, public access to hearings has been limited by restrictions or controls. Some of these restrictions, such as age limits or not admitting latecomers are often difficult to justify. However, in other places it is the weakness of the administrative system that makes access to public hearings difficult. Problems such as the absence of a public schedule for hearings, the lack of respect for starting times and the massive failure of hearings are all elements that deteriorate the effective practice of making trials public.

i) The Public Prosecutor is not as dynamic as hoped. Lack of leadership in the Public Prosecutor's Office

Beyond the significant differences among the reform processes, all of those observed in this study have placed a great emphasis on endowing the criminal prosecution system, and particularly the Public Prosecutor's Office, with a large degree of flexibility and authority. It is hoped that these increased faculties will allow more effective prosecution and more dynamic fulfillment of the prosecutors' responsibilities of preparing and presenting accusations in the context of an oral trial in an adversarial system.

In spite of this wide support, it was observed in all countries that the working methods within the Public Prosecutor's Office have evolved less than hoped, given the new designs considered in the reforms. In accounting for this delay, the following features are worth noting:

In all of the countries observed, there was a certain lack of leadership within the Public Prosecutor's Office. We are not referring to personal characteristics of those who direct these organizations, who without a doubt differ widely and at any rate are not the object of our analysis. Rather, despite the different experiences of each of the four countries, in all of them the Public Prosecutor's Office seems unable to change the traditional idea that each prosecutor works according to his personal criteria. Moreover, standardization and supervisory systems for the criteria have been insufficiently developed. These types of systems would allow for precise monitoring of the way that prosecutorial actions are

undertaken and would provide for introducing progressive improvements and implementing innovative programs.

Perhaps part of this problem is that the Public Prosecutor's Office does not view the system as a whole, and therefore does not see how changes in prosecutors' practices or the creation of innovative programs could help to resolve general problems. When the reform was envisioned, these types of measures were expected to be an important element in the process and were, in part, the justification for installing a hierarchical structure in this agency.

Curiously, according to the country reports, in some cases the relative autonomy of each prosecutor coincides with a high degree of hierarchy and even restriction of a prosecutor's power by his superiors, as is the case in Chile. Nevertheless, this entrenched hierarchy is more likely linked to a traditional bureaucratic model than to a modern organizational structure. In the latter, each employee's actions are strengthened by the higher levels of command, which are conceived of as a system of support and supervision with the capacity to introduce lasting improvements that maximize the efficiency of those on the front lines.

Another area in which the Public Prosecutor's Office appears to have evolved little in the context of the reform is the internal distribution of work among prosecutors. We have observed systems ranging from the very rigid, traditional model, as is the case in Cordoba, where cases are distributed to prosecutors on a territorial basis according to the courts before which they litigate, to others that, while less formal in structure, in practice show little specialization among prosecutors, in terms of the types of cases or the activities carried out. In general, each prosecutor receives a number of cases that he must try from beginning to end. There is little teamwork, little supervision or support from more experienced prosecutors, and there are no stages at which decisions are standardized.

j) Failure to use shortened proceedings

All of the countries in this study exhibited the same tendency toward avoiding shortened proceedings in favor of using the most conventional path, which normally involves much longer procedural steps, including investigations that are often unnecessary in this type of case. This was especially apparent in *en flagrante* cases or others in which all evidence is given in the initial stages of criminal proceedings. Based on the information provided in the reports, it is not possible to determine the causes of this generalized behavior. However, by linking it to other information contained in the country reports, it is possible to suggest causes, not only for the prosecutors' avoidance of shortened proceedings, but for the lengthiness of trials in general.

The first consideration worth noting is that there does not seem to be any process within the Public Prosecutor's Office for evaluating and improving proceedings that would allow for the implementation of increasingly superior practices. However, the internal culture of this institution seems to be analogous to that of the judiciary, which places the greatest value on the independence of each judge in determining the legal aspects of his own proceedings.

A second issue arises from the still customary belief that all cases must be treated in the same manner. Functional specialization is still very limited within the Public Prosecutor's Offices, and a clear idea of the enormous differences that exist between cases does not yet seem to have developed. In a significant proportion of the most common types of cases there is no need for a true investigation because almost all of the evidence is gathered at the time when the crime comes to the attention of the police, which also coincides with the arrest of the accused. In fact, of all the trials observed in all of the countries, 57% of the accused had been arrested *en flagrante delicto*, and thus, at least potentially, their cases could have been resolved quickly. It seems that behind this reluctance to use faster proceedings is an attachment to the values of the inquisitive system, which views criminal procedures as indissolubly linked to a lengthy investigation.

Despite the fact that it has been one of the general principles of the reform, the idea that the criminal procedure process must operate under time pressure does not seem to have been inculcated strongly enough. Apparently, the implementation and training processes have not been able to generate the type of interaction among the different parties involved that would motivate prosecutors to present cases rapidly. That being said, the training received by judges and public defenders in Chile to pressure the prosecutors to act quickly, seems to have produced some effect. Although shortened proceedings have not been taken advantage of here, at least the time leading up to an oral trial is substantially shorter than in the other countries.

Finally, with a view toward resolving more cases or shortening the length of trials, it appears that there have not been enough incentives developed to encourage prosecutors to be more aggressive in their application of the mechanisms introduced by the different reform processes. On the contrary, it seems that the incentives have not kept pace with the new levels of responsibility; prosecutors continue to travel the safe road of repeating routine actions rather than embracing innovation. In Cordoba, the Public Prosecutor has developed a policy aimed at pressuring prosecutors to try cases in oral trials. Nevertheless, the definitions used in this policy seem to be quite broad, and although some positive results have been seen, this measure does not seem to focus enough on aspects such as timeliness and the effective management of cases.

k) Formal defenses: Should they advance further?

All of the national reports note the existence of defense systems which, despite some organizational problems, are actually functioning, at least in terms of providing the accused with an attorney for each proceeding where required by law in the event that they cannot hire one for themselves. This represents a fundamental change from the normal practice in traditional systems throughout Latin America. Again, differences between Costa Rica and Cordoba and the cases of Chile and Paraguay must be noted. In Costa Rica and Cordoba these Public Defense systems existed prior to the reforms under study and have already been consolidated. In Chile and Paraguay it was precisely the reform that introduced the need for and established the systems that provide the effective presence of a defender in the primary activities of the criminal procedures. The defense systems of both countries were previously very precarious; therefore, this highlights the fact that the changes have been substantial.

Despite the presence of a defender in the primary activities of the proceedings, it was noted in all of the cases that their activities do not go beyond this role. With very few and limited exceptions, public defense systems are not able to conduct parallel investigations. Nor are there systems that allow the effective presence of public defenders in police precincts. They only intervene before jurisdictional bodies or before the Public Prosecutor's Office on relatively formal occasions. A certain weakness was noted, in some cases, in the concrete actions of the defense before the prosecution. That is to say that defenders are present for each of the basic components of the proceedings, but there are doubts as to their effectiveness. Certainly, we do not have the information to evaluate this in a more detailed manner, but it appears that the objective of each of the countries has been to provide a defender for each case, before having implemented an explicit policy to strengthen their authority.

The precise role of the defender merits serious reflection. The obvious and usual demand placed upon the defense systems is to increase their ability to conduct parallel investigations that will allow them to verify the information gathered by the prosecution or even to generate completely independent information.

We believe that this should be a subject for discussion, particularly with respect to the mechanisms available to the prosecution, because problems of rigidity, specialization, lack of personnel and in some cases, financing are still preventing them from attaining high levels of efficiency. It is very likely that strengthening the defense in the ways mentioned above would produce great imbalances at this stage. However, there does appear to be an urgency for better defining the tasks and the objectives of the defense in proceedings, as well as establishing incentives, controls and procedural models required to optimize the results obtainable from an expensive pool of professionals whose specific role seems somewhat unclear.

k) Weaknesses in the model for police work

Another problematic area mentioned in all of the reports is the relationship with police work within the new criminal procedure systems. In Cordoba, this has been a central issue of the reform. In Chile, the reform did not address this area, at least in institutional terms. In Costa Rica and Paraguay the reform has been strongly linked to previous procedures that had brought about the creation of special investigative police units tied to the Public Prosecutor's Office.

There are some general tendencies regarding the police that bear mentioning. In our opinion, these trends represent common problems that can be seen as weaknesses within the overall process.

First, it must be noted that the subject of police work as related to criminal prosecution and its impact on the reform process has not be the object of the same level of concern nor is the level of information on the issue similar to that available for the judicial stages of the process. Moreover, there is no clear model for police organization and work that would provide an alternative to the traditional paradigm, as is the case for the judicial stages. In some ways, the topic of police work is presented as a lateral concern to the reform process, which is made evident by its impact and the problems that it creates, but that does not form part of the basic design.

Closely linked to the lack of models and information described above, there is a general tendency in the reforms to address, in some cases almost exclusively, police work only in terms of the criminal investigation. This points to a problem of restructuring, as in Cordoba, or at least to an emphasis on training or financing of new programs. Nevertheless, the information available shows that the majority of the cases actually heard, such as all of the *en flagrante* cases, are related to situations when non-specialized, preventative, administrative and street police intervention was fundamental. It is within the context of general preventative, control, and patrolling actions by the police where a majority of the crimes that are processed are discovered and solved. It therefore seems that although the topic of criminal investigation as a specialized police activity is very important, the work of the regular police is just as important, if not more so, as their ability or inability to adapt to the requirements of the reform has a major impact on the end results. The case of Chile is a primary example in this sense: problems with the police have been among the largest in the reform process and refer specifically to the inadequacies of the preventative police work, which is generally attributed to training problems.

Another police-related trend in the reforms has been to attempt to establish an institutional link between the specialized units involved in criminal investigation and the Public Prosecutor's Office. This has been observed in three of the systems under study (Cordoba, Costa Rica and Paraguay) although, in some cases, it was not directly related to the reform. Evolution of the police systems is generally connected with the idea of endowing police work greater levels of professionalism and trust than has been the norm to date, and apparently this can be justified to some degree. For example, this has resulted in a reduction of abusive police practices in Cordoba. Nevertheless, there are some aspects that may be considered problematic in addition to those described above regarding the exclusive attention to investigative activities.

The first problem worth mentioning pertains to the difficulties in defining roles. The roles of both the prosecutors and the police are extraordinarily intense. Their duties are tightly defined and this tends to form very strong institutional cultures. In general terms, this tends to lead to institutions with rather monolithic internal cultures shaped by the primary role that defines them. The interaction of these two areas usually generates problems in constructing a role for the area that for historical or other reasons appears to be weaker. In Costa Rica, for example, the system has been criticized in that police logic permeates the prosecutors in the Public Prosecutor's Office and prevents a stronger and clearer definition of their function. On the other hand, it has been difficult for Cordoba's judicial police to assume a true police role. The staff tend to act and see themselves more as judicial officials (actuaries or clerks), and in fact, the judicial police in this province still do not have a detective unit.

In addition to the difficulty of defining clear roles, the prosecutors have not proven themselves to be comprised of a dynamic unit aimed at assuming and expanding the discretional authorities that the majority of the reform processes have afforded them. To the contrary, the common trend has been to reproduce the organizational and working methods of the traditional investigative judicial system, with all of its rigidity. The problem is that this tendency has also been passed on to the judicial police, causing them to lose the dynamism that police need to carry out their duties. Therefore, what has been gained in reliability, has been lost in flexibility and efficiency.

Until now, the reform processes have not appeared to have formulated a model of police work that addresses two fundamental issues: how to deal with the highly important work done by the non-specialized police force, and how to inspire greater reliability in a police force which, in turn, does not lose its identity of playing a strong role, maintaining and even increasing its flexible structures and keeping ample room for the exercise of discretion.

m) Lack of information

In general, the reports essentially refer to the empirical information collected directly by the field teams through observations and interviews. In every case, albeit with significant differences, it proved significantly difficult to obtain official quantitative information. There is a tremendous lack of information on the activities of every organism. In some cases, the Public Prosecutors have some information on the cases in which they are involved. In the case of the courts, this information is much more scarce. It was also difficult to access budgetary information on the costs of the different reform processes, especially when attempting to separate it with the aim of discovering the greatest expense involved in the change of system. Finally, it is worth noting that with very few exceptions, there are no studies that address the empirical question from every possible perspective. This experience of attempting to obtain information confirms the perception that the discussion on the reform processes has largely been based on purely legal arguments connected with an analysis of the rules, and a review of certain values or perceptions of reality that are generally not based on systematically-acquired facts.